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71-1549

No. A-1026

FILED
MAY 26 1972
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

MAY TERM 1972

FREDERIKA BLANKNER,
Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,
Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 41867

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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CONSTITUTIONAL PROVISIONS

Article 1, § 10 United States Constitution ..2, 11, and passim

Fourteenth Amendment ..... 2, and passim

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MISCELLANEOUS

"Expanding the University of Chicago" by Julian H. Levi in Casebook on Campus Planning and Institutional Development, Ten Institutions, How They Did It, United States Department of Health, Education and Welfare, 1962, pp. 107-127 15-16

Municipal and Industrial Relations Within Boston, The Benefits of Section 112 of the Federal Housing Act of 1961, Julian H. Levi, University of Chicago Press, 1964 16

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Urban Renewal, Illoway, Chicagoland Magazine, July, 1970, pp. 22-26, 38-41 17

CONSTITUTIONAL PROVISIONS INVOLVED

Article 1 Section 10
No State shall . . . pass any Bill of Attainder .....
.....2, 11, and passim

Fourteenth Amendment
. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws .....2, and passim

STATUTORY PROVISIONS INVOLVED

The statute involved is the Illinois Urban Renewal Consolidation Act of 1961, Chapter 67½ Illinois Rev. Stat. 1968 .....3, and passim

Sections 91.103(i), 91.109, 91.110, 91.111, 91.112 are found in Appendix E 19a-21a

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Petitioner respectfully prays a writ of certiorari issue to review the final order of the Supreme Court of Illinois entered herein on affirming the decision of the trial court.

OPINION BELOW

The opinion of the Illinois Supreme Court is reported at 277 N.E.2d 129.

JURISDICTION

The final order of the Illinois Supreme Court was made and entered on November 24, 1971. Rehearing was denied

January 14, 1972. Copy of the decision is appended to this petition in Appendix A at pp. 1a-3a. The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

Under Illinois law, the City of Chicago may condemn property located in an area found by resolution of the Urban Renewal Board to be slum and blighted where such finding has been approved by an ordinance of the City Council of the City of Chicago.* The landowners are not given a hearing or notice in the proceeding before the Urban Renewal Board or in the proceedings before the City Council. In the suit for condemnation the City establishes its *prima facie* case merely by introducing into evidence the resolution of the Board and the ordinance of the City Council. It then becomes incumbent upon the landowner to prove that the area so designated is not in fact slum and blighted. The questions presented for review are:

1. Are the resolution of the Urban Renewal Board and the ordinance of the City Council Bills of Attainder violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment?

2. Does the presumption in the condemnation proceeding that an area is slum and blighted only because of the resolution and ordinance of the City Council and Urban Renewal Board, violate due process where such task of proving the area is not slum and blighted is onerous and impossible, thereby denying the property owner equality before the law?

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* These areas can be quite large. For example, the present case involves an area of 105.6 acres, 266 structures, and 2592 living units.

STATEMENT OF FACTS

The petitioner, a retired university professor with a very modest pension, owns a small apartment building located in an area adjacent to the University of Chicago, a private institution.

The City of Chicago under authority of the Illinois Urban Renewal Consolidation Act of 1961 created the Department of Urban Renewal. On October 8, 1964, the Board of the Department of Urban Renewal without affording petitioner a hearing and without notice found that the area in which petitioner's property is located was a "slum and blighted area, of not less than two (2) acres, located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals, or welfare". The Chicago City Council by ordinance adopted on November 16, 1964, approved the resolution. (Appendices B and C)

On October 14, 1966, without notice to petitioner and without affording her a hearing, the Chicago City Council adopted an ordinance authorizing the sale to the University of Chicago of 1,055,832 square feet of property in the area adjacent to the university. Said property included petitioner's building.

Under federal law, the Department of Urban Renewal receives sizable federal credits when it sells urban renewal property to a university for improvements which the university constructs on the property.

On April 1, 1968, the City of Chicago filed a suit to condemn petitioner's property on the ground that it was located in an area which was allegedly slum and blighted.

The petitioner filed a timely traverse and motion to dismiss, specifically claiming that the area was not slum and blighted but rather the property was being taken for the private use and private purposes of the University of Chicago in violation of the Fourteenth Amendment. Appropriate excerpts of the traverse are found in Appendix D. Petitioner also requested that the allegations that the area is slum and blighted be stricken as follows:

> "1. That this Honorable Court strike the gratuitous and legal conclusion of petitioner's Item 12 and such portions of Items 13 and 14 as may be herein involved.
>
> 2. That this Honorable Court dismiss the Petition of the City of Chicago herein with costs to the petitioner.
>
> 3. That this Honorable Court take under advisement the assessing against the petitioner of costs and reasonable attorney fees incurred by the defendants in being forced to defend against and as a result of this action." (C. 67)

The City then offered into evidence certified copies of the resolution of the Department of Urban Renewal and the ordinance of the City Council. Petitioner's attorney then stated:

> "Your Honor, I think I will rest at this point, because I do not see the *prima facie* case yet to have been made out by reason of the submission of these exhibits." (C. 182)

Following a hearing on the traverse and motion to dismiss, the Circuit Court of Cook County entered an order denying the traverse and motion to dismiss. (C 98)

A jury trial was then held on the issue of value. The jury returned a verdict awarding $40,750 to the defendant. The trial court entered an order awarding the property to the respondent City upon the deposit of $40,750. (Appendix F)

An appeal was taken directly to the Illinois Supreme Court. The Supreme Court of Illinois in affirming the trial court's decree likewise passed upon the petitioner's claimed constitutional rights, saying:

> "She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her due process and equal protection rights guaranteed under the Fourteenth Amendment to the Constitution of the United States.
>
> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case, (*City of Chicago* v. *Barnes*, 30 Ill.2d 255; *Chicago Land Clearance Comm.* v. *Quinn Home Builders*, 11 Ill.2d 111), and the trial court did not err in denying the traverse and motion.
>
> "Defendant contends further that the court erred in denying her motion to dismiss for the reason that the petition contains conclusions of law and does not plead the ultimate facts requisite to state a cause of action in eminent domain. An examination of the petition shows it to be sufficient and the motion to dismiss was properly denied."

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. Under Illinois law, an area which is slum and blighted can be condemned for urban renewal purposes and sold to private individuals and institutions for redevelopment. Petitioner does not challenge this practice. Petitioner does challenge the procedure by which the area is determined to be slum and blighted on the grounds that the procedure amounts to a Bill of Attainder and is violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

2. The Illinois procedure is as follows:

(a) The Department of Urban Renewal declares an area to be slum and blighted. No hearing is required or provided whereby landowners can cross examine witnesses or present evidence, nor is a notice given to property owners. In *City of Chicago* v. *Zwick*, 27 Ill. 2d 128, 1963, the Illinois Supreme Court held that an owner did not have the constitutional right to a hearing before the Urban Renewal Board prior to its designation of an area as slum and blighted, because the Board hearings are legislative in character. The Urban Renewal Board thus acts as plaintiff, judge and beneficiary in this proceeding without hearing the landowners.

(b) The resolution is then approved by the City Council. Once again, the property owners are not given notice, nor do the property owners have a right to a hearing before the City Council.

(c) Property owners in the area are given an opportunity to sell their property to the City; should they refuse to do so, a condemnation suit is brought against each owner individually.

(d) In the suit for condemnation, a property owner of the area can deny that the area is slum and blighted. But, the burden of proof is on him or her to show that it is not slum and blighted. The Illinois courts have held that the landowner is thus given an opportunity to prove that the area is not slum and blighted.*

3. In reality this "opportunity" to prove that one's area is not slum and blighted is a legal fiction because:

(a) The enormity and costs of the task of investigating and proving an area is not slum and blighted are beyond the resources of an ordinary property owner.

(b) The term "slum and blighted", as used in the Illinois Statute, in the resolution of the Urban Renewal Board, and in the complaint for condemnation is so vague that even if a property owner had the resources to investigate the entire area in which his or her property is located, the petitioner would not know what would have to be proven or disproven.

4. No property owner can reasonably be expected to prove that his or her neighborhood is not slum and blighted.

The area in question consists of 105.6 acres, made up of 266 structures with a total of 2592 living units. (See Appendix B) Even assuming that the petitioner knew what constitutes slum and blighted, she would be required to in-

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* But note that in the oral argument in the present case before the Illinois Supreme Court, Justice Thomas E. Kluczynski asked the attorney for the City the following question:

"Could a successful traverse ever be filed?"

The attorney for the City responded:

"It would be very hard."

vestigate each of these 266 structures as to their exterior and interior physical condition, their overcrowding, design, ventilation, light and sanitary facilities, land coverage, land use, and layout.

Petitioner, a retired school teacher, cannot be expected to show that these 105.6 acres with 266 structures containing 2592 living units are not in fact slum and blighted. Petitioner does not have the financial resources to undertake this survey which would cost hundreds of thousands of dollars. No private homeowner would.*

Even if she had the financial resources she would not have the legal authority to enter these structures for the purposes of such an investigation.**

5. Even if petitioner had the financial and technical resources to investigate the entire area she would not know what would have to be proven or disproven. The statute, the resolution of the Department of Urban Renewal and the Designation Report of the Urban Renewal Staff, the ordi-

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* For example, the petitioner was impoverished by expenses related to the condemnation, the jury trial and the first steps of the appeal for which she was compelled to go into debt many thousands of dollars.

Accordingly for legal representation to appeal to the Illinois Supreme Court and the Supreme Court of the United States the petitioner has had to resort to the restricted and uncompensated services of the Community Legal Counsel.

** It cannot be emphasized too strongly that the petitioner must show that the entire area of 105.6 acres is not slum and blighted. The condition of her particular building is irrelevant.

It should be noted that property which standing by itself is innocuous and inoffensive may nonetheless be taken for redevelopment pursuant to urban renewal. *City of Chicago* v. *Zwick*, 27 Ill.2nd 128, 188 N.E. 2nd 489 (1963) appl. dism. 373 U.S. 542; *Berman* v. *Parker*, 348 U.S. 26.

nance of the City Council, and the petition to condemn do not allege any facts which could be proven or disproven.

(a) Section 3(i) of the Urban Renewal Consolidation Act, Chapter 67½ §91.103(i), Illinois Revised Statutes (1968) provides:

> "Slum and Blighted Area means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors are detrimental to public safety, health, morals or welfare."

(b) The resolution by the Department of Urban Renewal merely approved a report by the Department staff alleging that certain buildings in the area "meet the requirement of Section 3(i) of the Act for a "Slum and Blighted Area Redevelopment Project" and that the area was "of not less in the aggregate than two (2) acres where buildings or improvements by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or a combination of these factors, are detrimental to the public safety, health, morals or welfare."

(c) The report made by the urban renewal staff (Appendix B) and attached to the resolution is not useful in discovering the basis on which a determination was made that this area was slum and blighted. For example, Section 3 of the report states that 92.5% of the 266 structures in the area "had one or more of the

characteristics listed" in the definition of slum and blighted area in the Urban Renewal Consolidation Act of 1961.

Without identifying location the report contains lists giving only the number of units which allegedly are: (1) dilapidated, (2) obsolete, (3) guilty of faulty arrangement or design, (4) lacking adequate sanitary facilities, (5) lacking adequate ventilation or light, (6) guilty of excessive land coverage, (7) guilty of deleterious use, (8) guilty of deleterious layout, (9) overcrowded, and (10) without any of the above deficiencies.

The report does not define what, if any, are the objective standards by which these determinations are made, nor does it disclose names of the staff personnel responsible for the preparation of the report or their qualifications.

The report does not state which structures have these conditions. The report does not allege a single housing or building code violation.

(d) The ordinance adopted November 16, 1964 by the Chicago City Council merely stated that:

> "The City Council hereby approves said determination of the Department of Urban Renewal to acquire the [60th-Cottage Grove area . . ."] (Appendix C)

(e) The City of Chicago's petition to condemn alleges that the parcel of real property involved in this litigation lies within an area that has been legally termed "Slum and Blighted Area Redevelopment Project 60th-Cottage Grove." The petition further alleges that the acquisition of the parcel of land involved in this litigation is necessary for slum clearance and eradication.

Defendant's attorney, in an effort to require the City to allege facts which could be proven or disproven, made a motion to dismiss the petition on the ground that the allegations contained therein were conclusions of law. The trial court denied the motion.

5. The resolution of the Urban Renewal Board, and the ordinance of the City Council constitute a Bill of Attainder against owners of property located in the areas in question. The area had been adjudged to be slum and blighted by legislative fiat.

The resolution and ordinance in effect punish the property owner without an effective judicial trial. Article 1 §10 of the United States Constitution prohibits states from enacting Bills of Attainder. The common definition of a Bill of Attainder, first set forth by the United States Supreme Court in *Cummings* v. *Missouri,* is "a legislative act which inflicts punishment without a judicial trial." *Cummings* v. *Missouri,* 4 Wall 277 at 323.

Later the Supreme Court said: "Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are Bills of Attainder prohibited by the Constitution." *United States* v. *Lovett,* 328 U.S. 303 at 315.

6. Traditional separation of power notions underlie in part the constitutional ban upon legislative attaint. Justice Field once said that, in enacting Bills of Attainder, "the legislative body . . . exercises the powers and office of judge, it pronounces upon the guilt of the party, without any of the forms or safeguards of trial . . . it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." *Cummings* v. *Missouri,* 4 Wall

277 at 323. Chief Justice Warren has referred to the constitutional clause as an implementation of the separation of powers, "a general safeguard against legislative exercise of the judicial function, or more simply, trial by legislature." *United States* v. *Brown,* 381 US 437 at 442. In the present case we have the City Council and Urban Renewal Board adjudicating particular areas to be slum and blighted without providing the property owners with an opportunity to be heard or a notice. Such a practice is violative of the Due Process Clause and of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

7. It has traditionally been held that the effect, and not the form of the legislation is the controlling factor in determining a Bill of Attainder. "If the inhibition can be evaded by the form of the enactment," says the Supreme Court, "its insertion in the fundamental laws was a vain and futile proceeding." *Cummings* v. *Missouri,* 4 Wall 277 at 325. See also, *Fletcher* v. *Peck,* 6 Cranch 87. Under Illinois case law the property owner is given an "opportunity" to show that the area is not slum and blighted in the proceeding to condemn the property. However, under Illinois law this opportunity is illusory.

8. In *United States* v. *Lovett,* 328 US 303, the United States Supreme Court held unconstitutional an act of Congress which prohibited the payment of further salaries to three named federal employees, and, in effect, permanently excluded them from employment by the federal government. The Court ruled that such permanent deprivation was severe "punishment."

Similarly, in the present case we have a legislative body which has selected a particular group and divested them of their property, their homes, their neighborhood and their way of life without a hearing.

9. In *United States* v. *Brown*, 381 US 437, the Supreme Court held unconstitutional as a Bill of Attainder §504 of the Labor-Management Reporting and Disclosure Act of 1959, which makes it a crime for one who is, or has been within the five years preceding, a member of the Communist Party, to serve as a member of the executive board of a labor organization. By designating the Communist Party by name, Congress was legislating with respect to members of a specific group, rather than with respect to general characteristics. The Court observed:

> "The designation of Communists as those persons likely to cause political strikes is not the substitution of a semantically equivalent phrase. . . . In a number of decisions, this Court has pointed out the fallacy of the suggestion that membership in the Communist Party, or any other political organization, can be regarded as an alternative, but equivalent, expression for a list of undesirable characteristics." *United States* v. *Brown*, 381 U.S. 437 at 454.

To the majority of the Court in the *Brown* case there is no doubt that "punishment" can be found both from legislative retribution and prevention. "Historical considerations," says the Court, "by no means compel restriction of the Bill of Attainder ban to instances of retribution." *United States* v. *Brown*, 381 U.S. 437.

Similarly, petitioner does not attack legislation permitting the condemnation of property located in an area which is slum and blighted. Petitioner does attack the legislative designation of a particular area as slum and blighted without a hearing.

10. The United States Supreme Court has struck down state statutes unfairly shifting the burden of proof. In the leading case of *Speiser* v. *Randall*, 357 U.S. 513, the Supreme Court ruled that the state could not take away a tax

exemption without itself bearing the burden of persuasion to show that the taxpayer engaged in criminal speech. California law "which places the burdens of proof and persuasion on the taxpayer is a violation of due process," said the Court in a companion case, *First Unitarian Church* v. *County of Los Angeles*, 357 U.S. 545 at 546.

Legislation declaring that proof of one fact or group of facts shall constitute *prima facie* evidence of an ultimate fact in issue is valid only if there is a rational connection between what is proved and what is to be inferred. A *prima facie* presumption casts upon the person against whom it is applied the duty of going forward with his evidence on the particular point to which the presumption relates. A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the Due Process Clause of the Fourteenth Amendment. Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property. *Western & A. R. Co.* v. *Henderson*, 279 U.S. 639; *McFarland* v. *American Sugar Ref. Co.*, 241 U.S. 79; *Manky* v. *Georgia*, 279 U.S. 1; *Tot* v. *United States*, 319 U.S. 463; *United States* v. *Romano*, 382 U.S. 136; *Leary* v. *United States*, 395 U.S. 6.

In the present case, the Illinois urban renewal law as interpreted by the Illinois Supreme Court creates a presumption that an area is in fact slum and blighted only because the Urban Renewal Board adopts a resolution finding that the area is slum and blighted and the City Council approves the resolution. There is no reasonable relationship between the finding of slum and blighted and the fact of the finding. Chapter 67 1/2, §91.109 of the Illinois Revised Statutes (1968) does not require the Board to hold hearings.

The history of urban renewal is a history of chicanery on the part of public officials. For example, the Cleveland local renewal agency showed 70% of the buildings in its Erieview Project as substandard, but an inspection by the U.S. Comptroller General showed only 20% as substandard, *Premature Approval of Large Scale Demolition for Erieview Project I Cleveland*, Comptroller General of the United States, Report to Congress, June, 1963. For a further discussion of an urban renewal history see Abrams, *The City is the Frontier.*

11. The reliability of the finding becomes more suspect when one considers that the Department of Urban Renewal had fourteen million dollars to gain from this project.

Petitioner's property is located in an area adjacent to a private university, the University of Chicago.* The City passed an ordinance to sell petitioner's property to the University two years prior to filing suit to condemn her building.

Title 112 of the Housing Act of 1959 (42 U.S.C. 1463) provides that where a university purchases land through urban renewal from the City and then devotes the land to institutional uses compatible with the urban renewal plan, under the federal matching grant formula, two dollars would be available to the City for every one dollar the university expends.

Julian Levi, of the University of Chicago, explained the process as follows on page 127 of *Casebook on Campus Planning and Institutional Development, Ten Institutions,*

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* The university in its publications has for many years regularly referred to this area as its "South Campus."

How They Did It, published by the United States Department of Health, Education and Welfare (1962), in his chapter on "Expanding the University of Chicago".*

> "On July 18, 1960, Chancellor Kimpton and Chairman Lloyd formally presented the South Campus Proposal to the Chicago Land Clearance Commission. They noted that the University owned approximately 60 percent of the total land area between 60th and 61st Streets, Cottage Grove and Stony Island Avenues; that 26.5 acres were not so owned and were now characterized by widespread decay and deterioration. They noted that the University of Chicago would generate approximately $6,893,000 of Section 112 credits, which would be matched by $21 million of Federal Urban Renewal credits available to the City of Chicago; that of this amount the South Campus Project would cost approximately $6.5 million, thus leaving available to the City $14 million for use in support of urban renewal programs as the Mayor and City Council might determine."

In a second book, Mr. Levi has provided us with an excellent description of the operation of Section 112, *Municipal and Industrial Relations Within Boston, The Benefits of Section 112 of the Federal Housing Act of 1961* by Julian H. Levi, University of Chicago Press, 1964. On page 2, Mr. Levi states:

> "Congress passed Section 112 to achieve partially the solution of these implied problems.
>
> "The financial benefits can be great. For example, college, hospital, university purchases land and buildings for $1 million. It then devotes that land to institutional uses compatible with the urban renewal

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* Mr. Levi is Executive Director of the South East Chicago Commission, a commission organized and founded by the University of Chicago for the purpose of the redevelopment of the off-campus area.

plan or its development plan, which has been approved by the City Council. The city may then treat such institutional expenditures as if it were the city's own expenditures of $1,000,000 for streets, sewers, playgrounds or other facilities.

"Under the federal matching grant formula $2 million of the Federal Grant will be made available to the city's renewal program. Thus, as briefly described above, every dollar of institutional expenditures brings two dollars of Federal Grant."

CONCLUSION

During the last 22 years the City of Chicago has acquired over 1,500 acres of urban land through urban renewal. 19,283 families and 10,019 individuals have been displaced, (figures from Department of Urban Renewal, in part in Illoway, "Urban Renewal", *Chicagoland Magazine*, July, 1970, p. 24).

Urban Renewal can be used as a tool to improve society. There is a real danger that it can be misused as a land grab scheme to favor vested interests.

The courts have the duty to protect property owners and insure that only areas which are in fact slum and blighted are condemned.

Petitioner maintains that it is incumbent upon the State of Illinois to provide a hearing with notice at which all property owners can be represented and given an opportunity to submit evidence. Such a procedure would not unduly delay the urban activities of the City. In the present case, for example, the Department of Urban Renewal adopted a resolution declaring the area to be slum and blighted on October 8, 1964. On November 16, 1964, the

City Council approved the Department's resolution. However, suit to condemn petitioner's property was not filed until April 1, 1968. Certainly, it would not have been an undue burden on the City to require that it prove that the area is in fact slum and blighted in a hearing in which all interested parties could participate and before a trier of fact who does not have a pecuniary interest in the outcome of the proceedings. The City had three and one half years to provide such a hearing. Such a procedure would be in keeping with the constitutional requirement of due process rather than a legislative finding that a particular area is slum and blighted, which does not satisfy the requirement of due process.

Furthermore, the difficulty to any individual, considering the financial burden and physical burden of amassing the tremendous amount of evidence that is necessary in order to rebut the presumption created by the ordinance of the City of Chicago and the entire legislative process involved in the determination of the area in question as slum and blighted presents such an onerous, expensive and difficult task for an individual property owner that the effect thereof is in substance, although maybe not in form, to deny an individual property owner due process of law.

This is especially true considering the fact that the public bodies involved in the condemnation proceeding have unlimited financial ability and personnel to bear the burden of legal services and costs.

Accordingly, this situation places an unfair burden upon the property owner and does not give the property owner equality before the law.

Petitioner's building is still standing, in good condition, and all the apartments are occupied. Thus, relief from the Supreme Court would not be vain.

We submit that the entire proceeding under Illinois State Law is unconstitutional in that it denies the petitioner due process of law, and that therefore this petition for a writ of certiorari should be granted.

We ask this also because a judicial re-examination of current condemnation proceedings that result in defrauding citizens of their constitutional property rights is long overdue.

Attention to this question by the Supreme Court of the United States will also serve the national purpose of helping to restore the needed confidence of our citizenry in the American System which they have come to disbelieve and distrust, feeling that government is no longer concerned for the constitutional rights of individuals.

The foundation of our country through the Boston Tea Party, the Declaration of Independence and the American Revolution is rooted in the need to protest tyranny by governments over the governed.

Both the Constitution and the Bill of Rights were designed by the Founding Fathers specifically to prevent such oppression in our future by safeguarding the rights of the individual versus the State.

So to violate the rights of the individual as they are being violated in the unconstitutional condemnation proceedings under discussion is to violate our country.

As the United States approaches its 200th Anniversary, we as citizens ask our Supreme Court to help reconvince the public including young revolutionaries that our country is still our country and that what we need is not a second Revolution and a second Constitution for our second Cen-

tennial but only enforcement of the Constitution we already have.

Respectfully submitted,

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APPENDIX A

Decision of the Illinois Supreme Court

Docket No. 41867—Agenda 56—May, 1971.

THE CITY OF CHICAGO, Appellee, v. ROBERT L. WALKER *et al.*—(Frederika Blankner, Appellant.)

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Frederika Blankner, appeals from the judgment of the circuit court of Cook County entered upon a jury verdict in an action in eminent domain in which petitioner, City of Chicago, condemned a parcel of real estate owned by defendant.

The City of Chicago, under authority of the Urban Renewal Consolidation Act of 1961 (Ill.Rev.Stat. 1969, ch. 67½, pars. 91.101 *et seq.*) created the Department of Urban Renewal which on October 8, 1964, determined that a certain area adjacent to the campus of the University of Chicago was a slum and blighted area and should be acquired for redevelopment. The city council, by ordinance adopted on November 16, 1964, approved the Department's determination. The petition in this case was filed on April 1, 1968.

Defendant, the owner of a parcel of land situated in the area involved filed a "traverse and motion to dismiss" which in substance attacked the finding of the Department of Urban Renewal that the area was blighted, and charged that the property was being taken for a private and not a public purpose. In support of this latter contention defendant alleged that there was an agreement between the Department of Urban Renewal and the University of Chicago that upon acquisition of the property by the city it would be conveyed to the university, thus enabling the university to acquire, through exercise of the city's power

of eminent domain, property which the university had no authority to condemn.

The circuit court denied the traverse and the case was set for trial resulting in the verdict and the entry of the judgment from which this appeal is taken.

[1] As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her due process and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.

The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case. (*City of Chicago* v. *Barnes,* 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders,* 11 Ill.2d 111) and the trial court did not err in denying the traverse and motion.

Defendant contends further that the court erred in denying her motion to dismiss for the reason that the petition contains conclusions of law and does not plead the ultimate facts requisite to state a cause of action in eminent domain. An examination of the petition shows it to be sufficient and the motion to dismiss was properly denied.

[2] We have considered the arguments of defendant and of *amici curiae* that acquisition of the defendant's property through condemnation for resale to the university denies to this defendant the equal protection of the

law. We have previously held that the taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White,* 411 Ill. 310.) We do not discuss the remaining contentions of *amici curiae* for the reason that insofar as they are relevant to issues presented by the record they have been determined by our holding in *City of Chicago* v. *Zwick Co.,* 27 Ill.2d 128.

Finally, defendant contends that the circuit court erred in denying her request that the trial to determine just compensation be continued for an indefinite period or in the alternative for 90 days. The record shows that the court continued the case for 14 days and that this was adequate for the protection of defendant's rights.

For the reasons stated herein the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

APPENDIX B

Resolution of the Department of Urban Renewal finding area to be slum and blighted and Excerpts from Report of Staff.

RESOLUTION NO. 64-DUR-128

Determination that an area in the vicinity of East 60th Street and South Cottage Grove Avenue should be acquired for Slum and Blighted Area Redevelopment Project 60th-Cottage Grove

WHEREAS, the Urban Renewal Consolidation Act of 1961, Illinois Revised Statutes, 1963, Chapter 67-1/2, Sections 91.101 et seq., hereinafter referred to as the "Act," provides for the acquisition by a Department of Urban Renewal of slum and blighted areas, defined by the Act as an area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, over-crowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare, and

WHEREAS the Staff of the Department of Urban Renewal hereinafter referred to as the "Department," has hereupon presented to the Department a report on a certain area entitled "Report to the Department of Urban Renewal on Designation of Slum and Blighted Area Redevelopment Project 60th-Cottage Grove," dated October 1, 1964, finding that certain land in the vicinity of East 60th Street and Cottage Grove Avenue in the City of Chicago, Illinois meets the requirements of Section 3(i) of the Act for a Slum and Blighted Area Redevelopment Project; and

WHEREAS, the Department desires to evidence its determination that said land should be acquired pursuant to the provisions of the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE DEPARTMENT OF URBAN RENEWAL OF THE CITY OF CHICAGO THAT:

1. The Department having duly considered the aforesaid report of the Staff with respect to that slum and blighted area in the vicinity of East 60th Street and South Cottage Grove Avenue in the City of Chicago, said report is hereby adopted. Said area is more particularly described as follows: (legal description)
all as shown on the map attached hereto and made a part hereof.

2. The Department hereby finds that the area described in paragraph 1 hereof is a slum and blighted area of not less in the aggregate than two (2) acres where buildings or improvements, by reason of dilapidation, obsolescence, over-crowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout, or a combination of these factors, are detrimental to the public safety, health, morals or welfare.

3. It is hereby determined that said slum and blighted area should be acquired pursuant to the provisions of the Act and said area is hereby designated as "Slum and Blighted Area Redevelopment Project 60th-Cottage Grove."

4. A duly certified copy of this Resolution shall be delivered to the City Council of the City of Chicago, Illinois together with a request that said body approve the aforesaid determination of the Department.

5. This Resolution shall bear the date of its adoption and, subject to other provisions of the Act, shall be effective upon its passage.

Adopted: 10/8/64

CITY OF CHICAGO'S EXHIBIT 5A

REPORT TO THE DEPARTMENT OF
URBAN RENEWAL
on the Designation of Slum & Blighted Area

REDEVELOPMENT PROJECT
60th-COTTAGE GROVE

Department of Urban Renewal
City of Chicago

October 1, 1964

* * *

Report Prepared by the Staff of the
Department of Urban Renewal

[The complete 3-page mimeographed text of the Report follows, with summarizing tables 6 and 7:]

I. INTRODUCTION

The area discussed in this statement and hereinafter referred to as the 60th-Cottage Grove area, comprised of 105.6 acres, and located approximately 8 miles south and 1 mile east of Chicago's Central Business District, is bounded generally as follows: On the north, by East 60th Street, on the east by South Stony Island and Drexel Avenues, on the south by 61st and 63rd Streets, and on the west by Langley and Evans Avenues and an alley west of Cottage Grove Avenue. Those boundaries are shown on the exhibit entitled "Existing Land Uses," and in the legal description, attached to this statement.

From the data shown below, it is clear that the 60th-Cottage Grove area is a slum and blighted area and is eligible for redevelopment under the Urban Renewal Consolidation Act of 1961. That Act defines a slum and blighted area as "any area of not less . . . than two (2) acres . . . where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare."

The existing uses of the land and structures in the proposed project, the condition of the structures, and population estimates were obtained on field surveys conducted in May and August of 1964 and were supplemented by data gathered on previous surveys conducted in September and October of 1963. The results of these surveys are summarized below and are shown in greater detail in the attached tables.

II. EXISTING USES OF LAND AND STRUCTURES

Table I, "Land Uses," shows for the area the amounts and percentages of land used for various purposes. The gross area is 105.6 acres, of which 25.9 acres or 24.5 percent are used for public rights-of-way. Of the net area of 79.7 acres, 38.2 acres or 47.9 percent are used for pre-

dominantly residential and related purposes, and 41.5 acres or 52.1 percent are used for predominantly commercial and other non-residential purposes. Twenty-five and five-tenths acres or 32.0 percent are used exclusively for residential purposes, 2.7 acres or 3.4 percent are used for mixed residential and non-residential purposes, and 12.9 acres or 16.2 percent are used for commercial and industrial purposes.

As shown in Table 2, at the time of the survey, 187 or 70.3 percent of the 266 structures in the area were being used or had last been predominantly for residential or related purposes, and 79 or 29.7 percent being used or had last been used predominantly for non-residential purposes. One hundred and seventy-four or 65.4 percent were being used exclusively for residential purposes. Fifteen structures or 5.7 percent were being used for mixed residential and commercial purposes, and 74 structures or 27.8 percent were being used entirely for non-residential purposes.

As shown in Table 3, of the 192 structures with living units, 87 structures contained fewer than 5 units, 60 structures contained from 5 to 20 units, and 45 structures contained more than 20 units.

III. CONDITION OF STRUCTURES AND LIVING UNITS

The survey showed that most of the structures and the living units contained in them had deteriorated to a degree where rehabilitation or conservation would not be economic. As shown in Table 5, 246 or 92.5 percent of the 266 structures in the area had one or more of the characteristics listed in the definition of a slum and blighted area in the Urban Renewal Consolidation Act of 1961. As shown in Table 7, 173 or 92.5 percent of the 187 residential structures had one or more of the characteristics listed in that Act and 73 of the 79 non-residential structures had one or more of these characteristics. Also, as shown in Table 4, 134 or 50.4 percent of the 266 structures in the

area were dilapidated; 141 or 53.0 percent were dilapidated or lacked adequate sanitary facilities. (Table 7) As shown in Table 6, 98 or 52.4 percent of the residential structures were dilapidated, and 36 or 45.6 percent of the non-residential structures were dilapidated.

As shown in Table 4, 1442 or 55.6 percent of the 2592 living units in the area were located in dilapidated structures. As shown in Table 5, 2469 or 95.3 percent of the 2592 living units in the area were located in structures which contained one or more of the deficiencies listed in the definition of a blighted area. As shown in Table 9, 1346 or 60.3 percent of the 2233 dwelling units, and 151 or 42.1 percent of the 359 single room units in the area lacked adequate sanitary facilities or were located in dilapidated structures.

IV. EXTENT OF RESIDENTIAL CONVERSION

As shown in Table 10, 105 or 54.7 percent of the 192 structures containing living units have been converted. These conversions have increased the number of living units originally in the area from 1653 to 2592, or by 56.8 percent. The number of dwelling units has increased by 54.5 percent, from 1445 to 2233, and the number of single room units increased by 72.6 percent, from 208 to 359. The number of living units in the converted structures increased 159.1 percent, from 590 to 1529. The number of dwelling units in these structures increased 133.6 percent, from 590 to 1378.

V. POPULATION CHARACTERISTICS

As shown in Table 13, the estimated number of persons living in the 60th-Cottage Grove area was 6344 persons, of which 5590 were members of two-or-more person families, 472 were single persons living alone, and 282 were single persons living in private or institutional group households.

It is estimated that there were 1644 families in the area, of an average size of 3.4 members. Approximately 1179

or 71.7 percent of these families contained one or more minors. It is further estimated that approximately 90 or 5.5 percent of the families own the units in which they reside.

As shown in Table 14, approximately 43.9 percent of the 2168 households reporting length of residence had lived less than one year in the structure in which they were residing at the time of the survey; 61.4 percent had lived there less than two years; and 79.0 had lived there less than five years. Only 21.0 percent, or approximately one-fifth of the population had lived in the same structure in the area for five or more years.

VI. FEASIBILITY OF REDEVELOPMENT

A. ELIGIBILITY

As shown by the data referred to in the preceding sections of this statement and in the attached tables, the 60th-Cottage Grove area qualifies as a blighted area as defined in the Urban Renewal Consolidation Act of 1961.

B. MARKETABILITY OF THE LAND

The land in the area is to be redeveloped with residential, institutional, and related uses. Precise plans for redevelopment will be prepared following designation of the proposed project as a slum and blighted area redevelopment project by the Department of Urban Renewal and approval of that designation by the City Council.

It is not anticipated that there would be any problems in marketing the land in the area.

C. FINANCIAL

The estimated net cost of redevelopment of the 60th-Cottage Grove area is within local fund limitations, and it is anticipated that federal funds will also be available to reduce local costs.

D. RELOCATION

Relocation of the residents of this area would not be more difficult than in other projects of the Department of Urban Renewal. It is estimated that 1597 families and 639 single persons would have to be relocated.

If the 60th-Cottage Grove area is designated as a project by the Department of Urban Renewal, and if that action is approved by the City Council, redevelopment will proceed at a rate consistent with the Department's policy of not displacing families for whom standard relocation units are not available. Full facilities of the Department of Urban Renewal's relocation service would be available to residents of the area to assist them in relocating into standard living units.

TABLE 6

CONDITION OF STRUCTURES

	RESIDENTIAL AND PREDOMINANTLY RESIDENTIAL STRUCTURES			NON-RESIDENTIAL AND PREDOMINANTLY NON-RESIDENTIAL STRUCTURES	
	Number of Structures	Percent	Information Not Available	Number of Structures	Percent
Total Number of Structures	187	100.0		79	100.0
1. Dilapidated	98	52.4	1	36	45.6
2. Obsolescent	25	13.4	1	28	35.4
3. Faulty Arrangement or Design	111	59.4	1	35	44.3
4. Lacking Adequate Sanitary Facilities	55	29.4	1	5	6.3
5. Lacking Adequate Ventilation or Light	123	65.8	1	24	30.4
6. Excessive Land Coverage	107	57.2		63	79.7
7. Deleterious Use	12	6.4		18	22.8
8. Deleterious Layout	119	63.6		55	69.6
9. Overcrowded	82	43.9		0	0.0
10. Structures without any of the Above Deficiencies	14	7.5		6	7,6

Attachment to Report on Designation
60th - COTTAGE GROVE
October 1, 1964

TABLE 7

CONDITION OF STRUCTURES

	STRUCTURES		
	NUMBER	PERCENT	INFORMATION NOT AVAILABLE
Residential or Predominantly Residential Structures	167	100.0	
1. Dilapidated, obsolescent, of faulty arrangement or design, of deleterious use or layout, excessive land coverage, overcrowded, lacking adequate sanitary facilities, ventilation or light	173	92.5	---
2. Dilapidated, obsolescent, of faulty arrangement or design, of deleterious use or layout, lacking adequate sanitary facilities, ventilation or light	154	82.4	1
3. Dilapidated, obsolescent, of faulty arrangement or design, or lacking adequate sanitary facilities	135	72.2	2
4. Dilapidated, or lacking adequate sanitary facilities	105	56.1	2
5. Structures without any of the above deficiencies	14	7.5	
Non-Residential or Predominantly Non-Residential Structures	79	100.0	
1. Dilapidated, obsolescent, of faulty arrangement or design, deleterious use or layout, excessive land coverage overcrowded, lacking adequate sanitary facilities, ventilation or light	73	92.4	---
2. Dilapidated, obsolescent, of faulty arrangement or design, deleterious use or layout, lacking adequate sanitary facilities, ventilation or light	68	86.1	---
3. Dilapidated, obsolescent, of faulty arrangement or design, or lacking adequate sanitary facilities	55	69.6	---
4. Dilapidated, or lacking adequate sanitary facilities	36	45.6	---
5. Structures without any of the above deficiencies	6	7.6	

achment to Report on Designation
n-Cottage Grove
ober 1, 1964

APPENDIX C

Ordinance of Chicago City Council Approving the Resolution of the Department of Urban Renewal

Journal-City Council-Chicago, November 16, 1964, p. 3328

COMMITTEE ON PLANNING AND HOUSING.

Ordinance

To Approve Determination of Department of Urban Renewal that Slum and Blighted Area Redevelopment Project 60th-Cottage Grove should be Acquired for Redevelopment.

Whereas, The Urban Renewal Consolidation Act of 1961, Illinois Revised Statutes, 1963, Chapter 61½, [sic] Section 91.101 et seq., hereinafter referred to as the "Act", authorizes a Department of Urban Renewal, hereinafter referred to as the "Department", with Federal, State and City grant funds, to provide for the eradication and redevelopment of slum and blighted areas; and

Whereas, The Department has made a study of a tract of land on the south side of the City of Chicago, said area being hereinafter more fully described, and found that the area is a slum and blighted area of not less in the aggregate than two (2) acres where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout, or any combination of these factors, are detrimental to the public safety, health, morals or welfare; and

Whereas, Redevelopment of said area will be in accordance with a redevelopment plan or plans to be approved by the Department and the City Council of the City of Chicago; and

Whereas, Section 11 of the Act of 1947 provides that whenever a Department determines that a particular slum or blighted area, as defined in said Act, should be acquired

pursuant to the provisions of said Act, such determination shall be evidenced by a resolution adopted by the Department, and a certified copy thereof shall be delivered to the governing body of the municipality in which the area concerned is situated, and that no such determination shall be of any force or effect until it has been approved by the governing body of the municipality in which the area is situated; and

Whereas, The Department has by Resolution No. 64-DUR-128, adopted October 8, 1964, a certified copy of which has been delivered to the City Council of the City of Chicago, determined that said area should be acquired pursuant to the provisions of the Act, and has designated said area as Slum and Blighted Area Redevelopment Project 60th-Cottage Grove; and

Whereas, the Department desires to obtain the approval by the City Council of its determination to acquire the aforesaid area in accordance with the provisions of the Act, and the City Council desires to give such approval, all to the end that the eradication and redevelopment of slum and blighted areas may proceed; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

Section 1. Having been advised that the Department of Urban Renewal found that the area subsequently referred to in Section 2 of this ordinance as Slum and Blighted Area Redevelopment Project 60th-Cottage Grove is a slum and blighted area and has determined that said area should be acquired pursuant to the provisions of the Urban Renewal Consolidation Act of 1961, such determination having been evidenced by a resolution adopted by said Department, a certified copy of which has been delivered to the City Council, and the City Council having been advised by the Department of Urban Renewal that it desires to acquire said area for slum clearance and redevelopment, the City Council hereby approves said determination of the Department of Urban Renewal to acquire the area herein designated as Slum and Blighted Area Redevelopment Project 60th-Cottage Grove for slum clearance and redevelopment in accordance with the provisions of the Act. * * * *

APPENDIX D

Excerpts from Traverse filed by Petitioner-Appellant

6. That the defendants have neither knowledge nor information or belief with respect to Item 6 in the Petition and demand strict proof thereof, but that no matter what strict proof petitioner makes of said Item 6 the action of the Department of Urban Renewal of May 10, 1962, then and at that time, by this resolution 62-DUR-23, initiated those processes whereby and as a result of which the real property of defendants (both parcels being the private property of private persons), was to be taken from the defendants under the guise, appearance, and format of a condemnation proceedings of private property for public use, but in fact, and contrary to the avowed and declared purpose, was to result in the taking of private property from private persons for the private use and private purpose of the University of Chicago, a corporation at law, a private person, whose use of said real estate would be a private use for a private purpose, rather than public use and public purpose, in contravention and violation of the Constitution of this State and of the United States. (R. 61).

7. That the defendants have neither knowledge nor information or belief with respect to Item 7 in the Petition and demand strict proof thereof, the substance of defendant's pleading herein being substantially similar to Item 6 above, the City Council proceeding of June 15, 1962, furthering the Plan therein projected. (R. 61)

8. That the defendants have neither knowledge nor information or belief with respect to Item 8 in the Petition and demand strict proof thereof, that defendants plead with respect hereto as in Item 6 and 7 above, and that in particular, the Department of Urban Renewal Resolution 64-DUR-128, purportedly adopted by the Department on October 8, 1964, could not have been adopted but with

the knowledge, intention and plan that the end result of this resolution would be the taking of private property of the defendant for the private use of a private corporation, as hereinabove described, as per Items 6 and 7. (R. 62)

AND FURTHER, that the alleged Ordinance of the City Council of the City of Chicago entitled "To approve the determination of the Department of Urban Renewal that former blighted area redevelopment" allegedly enacted by the City Council of the City of Chicago on November 16, 1964, was an unconstitutional act violative of the Constitution of the State of Illinois, Article 2, Section 13, and of the Constitution of the United States, Article XIV, Section 1. (R. 62)

10. That the defendants have neither knowledge nor information or belief with respect to Item 10 in the Petition and demand proof thereof, and in particular, the City Council's purported Ordinance of December 7, 1965 was an unconstitutional act violative of the Constitution of the State of Illinois, Article 2, Section 13, and of the Constitution of the United States, Article XIV, Section 1. (R. 63)

11. That the defendants have neither knowledge nor information or belief with respect to the contents of Item 11 and demand strict proof thereof and in particular, that this allegation disguises the fact that the Redevelopment Plan herein referred to takes private property for private purposes, contrary to the Constitution of this State and of these United States. Defendants annexing hereto and incorporating herein a photostatic copy of the Redevelopment Plan of the Department of Urban Renewal of the City of Chicago, as well as the purported Ordinance of the City of Chicago of July 6, 1966, which, in its entirety, purports to give City Council sanction to the plan by incorporating it in the Council's action therein assertedly taken; as well as a photostatic copy of the Ordinance of the City of Chicago dated July 14, 1966, finalizing the acquisition by the University of Chicago of the private

property herein involved for the price therein indicated. (R. 64)

25. That the Plan of the Department of Urban Renewal of the City of Chicago dated May 13, 1965, copy of which has hereinbefore been attached hereto and made part hereof, together with that City Ordinance of July 6, 1966, incorporating said Plan together with the City Ordinance of December 14, 1966, hereinbefore incorporated herein constitute the culmination of an overall plan and purpose to deprive defendants herein of their property in violation of the Constitution of the State of Illinois and of these United States. (R. 66)

APPENDIX E

Statutes Involved

Chapter 67½ §91.103(i) Illinois Revised Statutes.

(i) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

§ 91.109 Powers of Department

The Department of Urban Renewal, as agent of the municipality, shall have and exercise the following powers with respect to redevelopment projects:

(a) To acquire slum and blighted areas and other areas which may constitute a redevelopment project as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan;

(d) To accomplish a combination of the foregoing to carry out a redevelopment plan. • • •

§ 91.110 Investigations and hearings

In making investigations herein authorized the Department may hold public hearings. Any hearing may be conducted by the Department or by a committee appointed by it, consisting of one or more members of the Department, or by an employee or agent specially authorized by the Department to conduct it. The Department and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the production of books and papers pertaining to such investigation. 1961, Aug. 15, Laws 1961, p. 3308, § 10.

§ 91.111 Determination that area constitutes redevelopment project—Resolution—Approval

Whenever the Department determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Department. Such determinations by the Department may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Department.

The area of each such determination shall be specifically designated in the resolution as a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project," according to the determination of the Department. A certified copy of such resolution shall be delivered to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the governing body of the municipality in which the area is situated. 1961, Aug. 15, Laws 1961, p. 3308, § 11.

§ 91.112 Acquisition of realty—Condemnation

Upon approval of the determination as provided in the preceding Section, the Department, as agent for the municipality, may proceed to acquire by gift, purchase or condemnation the fee simple title to all real property lying within the area included in the redevelopment project, including easements and reversionary interests in the streets, alleys and other public places lying within such area. If any real property is subject to an easement the Department, in its discretion, may acquire the fee simple title to such real property subject to such easement if it determines that such easement will not interfere with the consummation of a redevelopment plan. If any such real property is already devoted to a public use it may nevertheless be acquired, provided that no property belonging to the United States of America, the State of Illinois or any municipality may be acquired without the consent of such governmental unit and that no property devoted to a public use belonging to a corporation subject to the jurisdiction of the Illinois Commerce Commission may be acquired without the approval of the Illinois Commerce Commission. Each Department, as agent for the municipality, is hereby vested with the power to exercise the right of eminent domain. Condemnation proceedings instituted hereunder shall be brought by and in the name of the municipality and shall be in all respects in accordance with an Act entitled "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, as heretofore or hereafter amended.[1] * * * *

[1] Chapter 47, § 1 et seq.

APPENDIX F

State of Illinois)
) SS
County of Cook)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

CITY OF CHICAGO, a municipal corporation, Petitioner vs. FREDERIKA BLANKNER, *impleaded* with ROBERT L. WALKER, et al. Defendants	Condemnation Gen. No. 68 L 4969 Parcel No. 7-16

JUDGMENT ORDER

This matter coming on to be heard upon the Petition of the CITY OF CHICAGO, a municipal corporation, for the ascertainment of just compensation to be paid for the taking by said Petitioner, for the uses and purposes of its Petition mentioned and set forth, of the Property described therein being Parcel 7-16; the said Petition to Condemn having been heretofore filed on April 1, 1968 and the Petitioner CITY OF CHICAGO, a municipal corporation, appearing by RAMOND F. SIMON, Corporation Counsel, and EARL L. NEAL, Assistant Corporation Counsel, its attorneys, and BOODELL, SEARS, SUGRUE AND CROWLEY, appearing for Defendant.

And the Court having jurisdiction of the Petitioner and all of the Respondents to this suit who are interested in the real property legally described herein and the subject matter hereof and all parties interested being before the Court, and this cause having been heretofore duly set for trial for the ascertainment of the just compensa-

tion to be paid for the taking of the real property hereinafter described, which real property is set forth in said Petition to Condemn, as amended; and the Court being fully advised in the premises.

IT WAS ORDERED that a jury come; whereupon came the twelve jurors who, having been duly selected, examined and sworn, to ascertain and report that just compensation for the taking of the real property hereinafter described, and the jury, having heard the evidence adduced therein, the arguments of counsel and instructions from the Court, brought in their verdict in words and figures as follows:

"We the jury, duly selected, impaneled and sworn in the above-entitled case, after hearing the proof offered, report that we have well and truly ascertained the just compensation to be paid to the respective owner or owners of and party or parties interested in the Parcel of real property hereinafter described, together with all improvements thereon and appurtenance thereto and all interests therein and rights incident thereto of every kind and nature, and all private interests in the streets and alleys abutting the said Parcel of real property, to which Petitioner seeks to acquire the fee simple absolute title as stated in its Petition filed in this cause, as follows:

Parcel 7-16

To the owner or owners of and party or parties interested in Parcel 7-16 legally described as follows:

Lot 5 in John Wadsworth's Resubdivision, a subdivision of the South 457 feet of the West half of Block 1 in Commissioner's Partition, a subdivision of that part of the North West quarter of the South East quarter of Section 14, Township 38 North, Range 14, East of the Third Principal Meridian, lying South of the North 627 Feet thereof (except the East 203 feet of the North 236 feet); ALSO The East half of South Woodlawn Avenue West and adjoining, all in Cook County, Illinois.

the sum of Forty Thousand Seven Hundred Fifty and no/100 ($40750.00) Dollars and we the jury, find that the payment of said amount as shown above to the owner or owners of and party or parties interested in the real property above-described, justly compensates said owner or owners of and party or parties interested in the said real property, for the taking by Petitioner of fee simple absolute title in and to the real property aforesaid."

which said verdict is signed by each and all of said jurors aforesaid.

WHEREUPON said Petitioner moves for judgment on said Verdict and the Court being fully advised in the premises;

DOTH FIND, ORDER AND ADJUDGE that the sum of money awarded by the jury in and by their verdict to the owner or owners of and party or parties interested in said real property described in said verdict, is just compensation to the owner or owners thereof and party or parties interested therein for the taking of said real property, and the fee simple absolute title thereto, and all interests therein and rights incident thereto of every kind and nature, and all private interests in the streets and alleys abutting thereon, and judgment is herein entered accordingly.

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that the Petitioner, within one hundred twenty (120) days from the entry of this Order pay to the County Treasurer of Cook County, Illinois, for the benefit of the owner or owners of and party or parties interested in said Parcel 7-16 the sum of Forty Thousand Seven Hundred Fifty and no/100 ($40750.00) Dollars as full compensation for the taking of said Parcel 7-16 aforesaid for the uses and purposes set forth in its Petition herein.

IT IS FURTHER ORDERED AND ADJUDGED that upon payment as aforesaid the Petitioner herein shall be

thereby vested with the fee simple absolute title to said parcel of real property paid for by Petitioner as aforesaid; and thereupon said Petitioner, the City of Chicago, shall be authorized and empowered to enter upon and take immediate possession of said real property so paid for.

IT IS FURTHER ORDERED AND ADJUDGED that this Court retains jurisdiction of the above-entitled cause with respect to other parcels of real property sought to be condemned in the above-entitled cause (other than the Parcel of real property described in this Order): and this Court further retains jurisdiction of this cause for the purpose of awarding Petitioner Writ or Writs of Assistance to put Petitioner, City of Chicago, in possession of the parcel of real property with respect to which Petitioner has acquired the fee simple absolute title and right of possession, as aforesaid.

Enter /s/ Edward J. Egan
Judge

Dated at Chicago, Illinois
This 25th day of
February, 1969.

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MICHAEL ROBAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1549

FREDERIKA BLANKNER,
Petitioner,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION.

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Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION.

Preliminary Statement.

The petitioner has filed, in addition to the petition for writ of certiorari, a notice of appeal. Also, the cover of the petition refers to an "Appeal from the Supreme Court of Illinois." Because, however, the petition, at page 2, invokes this Court's jurisdiction only under 28 U. S. C., section 1257(3), the City of Chicago will file only this answer to the petition, and will not file a motion to dismiss or affirm. Nevertheless, while the argument presented will answer the petition in the context of Rule 19(1)(a) of this Court, the same argument may be considered responsive to Rule 16(1)(b) and (c), as if the matter were being brought before the Court on appeal.

It should also be noted that while rehearing was denied by the Illinois Supreme Court on January 14, 1972, Mr. Justice Rehnquist extended the time within which to petition to May 12, 1972, and then to May 25, 1972, in orders entered, respectively, April 4, 1972, and May 4, 1972.

REASONS FOR DENYING THE WRIT.

The Supreme Court of Illinois Correctly Applied Principles of the Law of Eminent Domain Which Have Been Well-Settled by This Court.

Petitioner's argument, raised for the first time in this Court, that "The resolution of the Urban Renewal Board, and the ordinance of the City Council constitute a Bill of Attainder" (Pet., p. 11), is wholly without merit. Somewhat related to this argument and equally without merit is one to the effect that, in a suit for condemnation, the "burden of proof" is unconstitutionally upon the property owner to show that the area of condemnation is not slum and blighted (Pet., p. 7).

Cummings v. *Missouri*, 4 Wall. 277, cited by the petitioner, defines a bill of attainder (referred to, where the penalty is less than death, as a bill of pains and penalties):

> "Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the text books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." (4 Wall. at 323.)

In the *Cummings* case, a Roman Catholic priest was indicted and convicted of teaching and preaching without

first taking a state-required oath which effectively disqualified former Confederate soldiers. The priest was fined $500 and jailed until payment.

Similarly, in *United States* v. *Brown*, 381 U. S. 437, also cited by petitioner, this Court described an anti-subversive oath as a bill of attainder for the following reasons:

> "The statute does not set forth a generally applicable rule decreeing that any person who commits certain acts or possesses certain characteristics (acts and characteristics which, in Congress' view make them likely to initiate political strikes) shall not hold union office, and leave to courts and juries the job of deciding what persons have committed the specified characteristics. Instead, it designates in no uncertain terms the persons who possess the feared characteristics and therefore cannot hold union office without incurring criminal liability—members of the Communist Party." (381 U. S. at 450.)

Neither case is applicable to the petitioner's situation. The legislative determination that an area is slum and blighted is not a finding of guilt against any person or class of persons. Nor does the determination, of itself, "take" any property. The designation simply makes findings of fact that the courts will recognize as establishing a *prima facie* case. In the suit for condemnation, the property owner has, of course, a complete opportunity to attack the *prima facie* case. The legislature, consequently does not assume the judicial function. The same constitution which proscribes bills of attainder also provides for the exercise of the power of eminent domain. Petitioner does not aid analysis by confusing the two.

Petitioner's contention that in a condemnation suit, the burden of proof is unfairly shifted to the property owner to prove that the area is not slum and blighted, is inaccurate. The burden of proof is upon the condemnor at all times; once, however, a *prima facie* case has been made, the owner

has a burden of going forward. The owner need not prove that the area is not slum and blighted, only that the condemnor's case is unsupportable. This burden is not different than the burden that any defendant or respondent has in litigation.

In support of her argument, petitioner cites *Speiser* v. *Randall*, 357 U. S. 513 (1958) and *First Unitarian Church* v. *County of Los Angeles*, 357 U. S. 545 (1958). In *Speiser*, the petitioners were applicants seeking a veteran's property tax exemption; they were required, under California law, to file an oath denying that they advocated the violent overthrow of the government. The law also placed upon the applicants the burden of showing that they were not persons who advocated overthrow. The Court observed:

> "It is, of course, familiar practice in the administration of a tax program for the taxpayer to carry the burden of introducing evidence to rebut the determination of the collector. [Citing cases.] But while the fairness of placing the burden of proof on the taxpayer in most circumstances is recognized, this Court has not hesitated to declare a summary tax-collection procedure a violation of due process when the purported tax was shown to be in reality a penalty for a crime. [Citing cases.] The underlying rationale of these cases is that where a person is to suffer a penalty for a crime he is entitled to greater procedural safeguards than when only the amount of his tax liability is in issue." (357 U. S. at 524-5.)

Thus *Speiser* and its companion case, *First Unitarian Church*, are not in point. There is no criminal liability at issue in this case. And the clear implication of the language quoted above is that, lacking a criminal liability, an administrative determination (supported in the instant case by a further legislative affirmance) is sufficient to place the burden of going forward, if not the burden of proof, upon the person opposing that determination.

The fact of the matter, of course, is that a procedure virtually identical to that employed in the instant case was approved in *Berman* v. *Parker*, 348 U. S. 26 (1954). The opinion there noted that

> "Once the Planning Commission adopts a plan and that plan is approved by the Commissioners, the Planning Commission certifies it to the Agency. . . . At that point, the Agency is authorized to acquire and assemble the real property in the area." (348 U. S. at 30.)

While petitioner does not expressly rely on the point, the charge is made, as though of some legal significance, that she was denied a hearing in the process leading to condemnation of her property. Thus, the petition asserts, at p. 6:

> "The resolution is then approved by the City Council. Once again, the property owners are not given notice, nor do the property owners have a right to a hearing before the City Council."

This statement is not true. As in most legislative bodies, when a resolution is presented to the Council, it is referred to committee, in this case the Committee on Planning and Housing. Before being referred back to the floor of the Council with a committee recommendation, a public hearing is held, with notice—and was so held on July 6, 1966, with respect to area in which petitioner's property is located. Notice of the hearing was published on June 24 and June 28, 1966, in *Chicago's American*, then a newspaper of general circulation. This hearing was, of course, in addition to the one afforded petitioner in the circuit court after the filing of the petition to condemn. And, with respect to the latter hearing, petitioner admits, at page 4 of the petition, that she *chose* not to introduce any evidence in support of her contention.

As a result, it is clear that the petition raises no questions of substance, either federal or non-federal, that have not

already—and repeatedly—been decided adversely to the petitioner's position; it is also clear that these decisions were applied in an utterly orthodox and correct manner in this matter by the Supreme Court of Illinois.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the petition for writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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JUN 10 1972

No. 71-1549

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Supreme Court, U.S.
FILED
JUN 26 1972
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

OCTOBER TERM 1971

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 41867

Motion

CONSOLIDATED PETITION FOR LEAVE TO FILE AND BRIEF OF AMICI CURIAE IN SUPPORT OF A PETITION FOR WRIT OF CERTIORARI

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CONSTITUTIONAL PROVISIONS INVOLVED

Preamble:

"We, the people of the United States in Order to form a more perfect Union, establish justice, . . . and secure the blessings of liberty for ourselves and our posterity, do ordain and establish this Constitution of the United States of America." 19

Fourteenth Amendment:

". . . nor shall any State deprive any person of life, liberty, or property without due process of law; . . ." 14

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Map: "Acquisition Parcel Map—Slum and Blighted Area Redevelopment Project—60th-Cottage Grove —Department of Urban Renewal, City of Chicago, May 13, 1965" in the "Redevelopment Plan" for the same area, May 13, 1965, approved by the Board of the Department of Urban Renewal June 16, 1966 and by the City Council July 11, 1966 10

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1971

No. 71-1549

FREDERIKA BLANKNER,

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vs.

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CONSOLIDATED PETITION FOR LEAVE TO FILE AND BRIEF OF AMICI CURIAE IN SUPPORT OF A PETITION FOR WRIT OF CERTIORARI

Now come the CHICAGO PROPERTY OWNERS ASSOCIATION, the AMERICAN LANDOWNERS ASSOCIATION, the GREATER CHICAGO PROPERTY OWNERS COUNCIL, and the STUDENT GOVERNMENT OF THE UNIVERSITY OF CHICAGO and move this Honorable Court for leave to file their consolidated brief as *amici curiae* in support of the petition for the issuance of a Writ of Certiorari previously filed by the petitioner, FREDERIKA BLANKNER, in Case No. 71-1549, and state as follows:

1. The CHICAGO PROPERTY OWNERS ASSOCIATION and the GREATER CHICAGO PROPERTY OWNERS COUNCIL are "not-for-profit" organizations composed of members who own real property in the Chicago-metropolitan area. The members of these organizations are principally the owners of single-family homes

and small apartment buildings who are interested in the effects and abuses of governmental power over themselves and others similarly situated.

2. The AMERICAN LANDOWNERS ASSOCIATION, with headquarters in Harper's Ferry, West Virginia, is a "not-for-profit" organization with members throughout the United States whose purpose is educational and informational. The ASSOCIATION seeks to protect the rights of small landowners and to intervene as a "friend of the Court" in litigation where a small property owner is involved in testing an issue important to the ASSOCIATION's membership.

3. The STUDENT GOVERNMENT OF THE UNIVERSITY OF CHICAGO is the elected representative assembly of the student body of 7300 members, both graduate and undergraduate, sanctioned by the university, to promote the interests of the student body and to foster a university community. Towards this end the STUDENT GOVERNMENT conducts inquiries and expresses the opinion of the organization regarding issues affecting the student body and the university community in order to call attention to such problems and cooperate with the university authorities in handling them.

4. The CHICAGO PROPERTY OWNERS ASSOCIATION, the GREATER CHICAGO PROPERTY OWNERS COUNCIL, the AMERICAN LANDOWNERS ASSOCIATION, and the STUDENT GOVERNMENT OF THE UNIVERSITY OF CHICAGO were each *amicus curiae* in the case at bar in the Illinois Supreme Court.

5. The CHICAGO PROPERTY OWNERS ASSOCIATION, the GREATER CHICAGO PROPERTY OWNERS COUNCIL, and the AMERICAN LANDOWNERS ASSOCIATION have been associated with this case as *amici*

curiae since they were granted leave of the Illinois Supreme Court to file briefs on October 16, 1969. These *amici* filed a joint brief in the Illinois Supreme Court and filed a petition for rehearing after the Court's decision.

6. The organizations and associations which seek leave to file their brief by this motion have requested the permission of the Corporation Counsel of the City of Chicago to file their views with the Court. The City of Chicago has not seen fit to grant them permission to so file. The Corporation Counsel's office first responded that this case had been pending for a substantial period of time and that any delay in the matter would inure to the detriment of the City. When the City was informed that the Rules of the United States Supreme Court did not allow a delay in the consideration of a Petition for Writ of Certiorari pending receipt of *amici* briefs, the answer of the City remained the same. It might be pointed out that the history of this case is most unusual in that the Illinois Supreme Court after granting the privilege of *amicus* standing to the makers of this motion and to the CHICAGO REAL ESTATE BOARD rejected petitions to appear as *amicus curiae* by the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, the DEARBORN REAL ESTATE BOARD, and the JANITORS UNION. The interest of all of the *amici* and applicants for *amici* is that the legal battle being here waged by a retired school teacher, without resources, raises critical constitutional questions of national importance to all owners of property large and small, and to those professions, businesses and occupations such as real estate brokers and janitors which are dependent upon the security of rules relating to the ownership of property.

7. The case at bar relates to the procedures required of public bodies before land can be condemned in urban

renewal slum projects. The interest of the STUDENT GOVERNMENT OF THE UNIVERSITY OF CHICAGO in appearing in such a matter relates to its personal view of the manner in which the University of Chicago has induced the City of Chicago to act as a public body to realize private desires of that institution. Through participation in this case, that organization has carried on substantial research in the general area of urban renewal which it believes would be useful to the Court in its decision regarding a grant of certiorari. The interest of the three property and landowner associations is less scholarly but more practical. Every member of these three organizations must deal with public bodies possessing the power of condemnation. As owners of small amounts of land and small housing units, the individual members of these associations, like Miss BLANKNER, find it most difficult individually to mount a large-scale attack on what they believe to be an unconstitutional practice of government. Only by a hearing as *amicus* in those few cases of this nature which reach Appellate Courts can the great bulk of smaller property owners express their views in an effective manner.

8. Clarification and determinations of law by the United States Supreme Court would be especially important for Illinois property owners since the new Illinois Constitution of 1970 grants for the first time in the State's history broad "home rule" powers to many Illinois municipalities. Property owners within the State of Illinois will, for the first time, be faced with the possibility of local urban renewal legislation which may fail to accord citizens the rights of notice and hearing in the absence of Federal guidelines.

WHEREFORE, applicants request leave to file with the Court their brief, which because of the shortness of time is printed following this motion.

IN THE
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OCTOBER TERM 1971

No. 71-1549

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Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 41867

CONSOLIDATED BRIEF OF AMICI CURIAE IN SUPPORT OF FREDERIKA BLANKNER'S "PETITION FOR WRIT OF CERTIORARI"

From the beginning of the Great Depression until the end of the Second World War, very little building took place in the United States. In the meanwhile, large-scale movements of peoples from rural America to the great cities of this country created wide areas in major cities which through conversions and ill-uses had substantially deteriorated. In addition to these problems which were economic in origin, racial discrimination had resulted in the crowding of minority groups into sections of cities which frequently contained the poorest quality housing. Faced with these problems, urbanologists and planners

came upon the concept of "urban renewal" as an answer to the new found municipal problems.

In 1954 the United States Supreme Court was faced with determining the constitutionality of urban renewal which appeared to be the precise answer to the new social problem. Thus, when presented with the new and promising concept, the Court gave it a constitutional bill of health. The Court said,

> "The experts concluded that if the community were to be healthy, if it were not to revert again to a blighted or slum area, as though possessed of a congenital disease, the area must be planned as a whole . . . it was important to redesign the whole area so as to eliminate the conditions that cause slums . . . it was believed that the piecemeal approach, the removal of individual structures that were offensive, would be only a palliative. The entire area needed redesigning so that a balanced, integrated plan could be developed for the region . . ."
>
> [*Berman* v. *Parker*, 348 U.S. 26, 34]

It does not need the urging of *amici* to bring to the attention of the Court the fact that the brave experiments of urban renewal have frequently not worked. That is not to say that the United States Supreme Court should be the arbiter of social experiments. The *amici* will, however, attempt to show that one of the fields in which urban renewal has failed has been the protection of the constitutional rights of the owners of property within renewal areas. Into such an area the Supreme Court has a responsibility of inquiry.

The *amici* will also attempt to show that an analysis of this problem by the United States Supreme Court is long overdue and that but for the impoverished nature of those potential litigants made victims of urban renewal, the issues presented by MISS BLANKNER would have come to the attention of the Court long ago.

The *amici curiae* have entered this case because the basic facts are symptomatic of the plight of tens of thousands of American property owners who are faced with urban renewal. The scenario is as follows:

> The property in question is an older building, either a single-family home or a small apartment building. The residents of the home and/or the owner of the building are retired individuals who have paid off the mortgage on their property and are attempting to live their later years in peace in a neighborhood they have called home for some time. They have attempted to keep their home or income-producing property in a reasonable state of repair but due to its age there are certain building violations present. A large institution, public or private, or a real estate developer becomes interested in the redevelopment of the area. The developer uses his friendship in municipal government to have studies made of the area which indicate that the area ought to be renewed. The municipal body rubberstamps the reports of its Department of Urban Renewal and without notice or hearing to the property owners involved unilaterally declares the area "slum" and "blighted". During the next few years, rumors sweep the affected area regarding the possible taking by the City. Since no one has received any communications regarding this matter, many people wait for some active step by the condemning authority. In the meanwhile, due to the rumors of governmental action, repair and maintenance projects are put off and the area deteriorates further. Finally, sometimes not until after a number of years, the governmental body which has been preparing its plans begins to purchase certain properties in the area by negotiation. At this point some people begin to realize that the condemning authority has never been required to satisfy anyone but itself that the area was slum and blighted. Property owners then approach the City, at that late date, to discover

exactly why the area was declared slum and blighted. Those who inquire about the designation of their particular buildings as "slum" and "blighted" are told that their buildings are in "good" or "rehabilitatable condition" but that the other buildings in the area are deteriorated beyond repair. Unfortunately, everyone who asks is told that it is not theirs but "the other buildings" which are the cause of the area's slum and blighted condition.

When finally almost all of the property is acquired, those structures which were found to be "slum" and "blighted" on governmental maps but which have previously been acquired by the developer of the land miraculously renew themselves so that they need not be wrecked.

Frequently, that land which once had upon it someone's retirement home, which cannot be duplicated with the proceeds of the settlement or condemnation award, serves the rather questionable social purpose of a parking lot or a mere buffer zone to separate racial or economically diverse groups.

All of the statements set out in the rather sad scenario are present in the BLANKNER case. If the Court grants the Writ of Certiorari, the specific facts which show the rawness and cynicism of the public and institutional bodies involved will be brought to your attention. The Appellant's brief in the Illinois Supreme Court had appended to it six appendices. The discussion in that brief regarding five of the appendices is appropriate here, and the discussion of appendices "B", "C", "D", "E", and part of "F" are set out here, verbatim.

APPENDIX B

A study was made of Woodlawn. The first draft of this study is entitled "Proposal for a Program to Meet Long Term Needs of Woodlawn." It is dated March 26, 1962 and states that it was prepared under the direction of

the Department of City Planning with funds provided through Community Renewal Program by the City of Chicago and the Housing and Home Finance Agency of the United States Government. It also states that it is for discussion purposes only. Figure 2 of the study is a map of the Woodlawn Community Area Proposal based on United States Housing Census of 1960. According to that map, the block on which petitioner's home is located contains the lowest ratio of housing units per block that are dilapidated and deteriorating. This map was based on United States Census of Housing, 1960.

APPENDIX C

This proposal did not satisfy the needs of the University of Chicago which wished to expand its Southern border. In a map prepared by the Chicago Department of Urban Renewal, dated December 1, 1964, almost every building in the Northern portion of Woodlawn is designated as deteriorated or having other building deficiencies. The events that occurred in the interim are best described by Arthur M. Brazier in *Black Self-Determination* (William B. Eerdman's Publishing Co. 1969, p. 54).

> "The City had run out of funds for urban renewal programs and wanted $14 million from Section 112 of the Housing Act of 1959. For the City to receive this money the University of Chicago had to sign certification papers. The university would not sign those papers until the City produced some kind of urban renewal program which would guarantee the university the land needed for the South Campus."

This is reaffirmed by Julian Levi in *Municipal and Institutional Relations Within Boston — Benefits of Section 112 of the Federal Housing Act of 1961* (University of Chicago, 1964) page 10 where he states:

> "Section 112 and its administrative regulations specifically provides that a Certification of Expenditure must be obtained from the institution."

Thus, the University was in the driver's seat in dictating the urban plan the City was to adopt.

In order to acquire these Section 112 credits, the City was thus compelled to find defendant-appellant's area slum and blighted.

APPENDIX D

As noted above, Mr. Levi stated that "the University owned approximately 60% of the total land area between 60th and 61st Streets, Cottage Grove and Stony Island." But, of course, it is logical that if the area was slum and blighted, all the University's buildings would have to be demolished. We are assuming that the area was slum and blighted warranting such clearance. The city prepared an acquisition map which shows that the City deliberately excluded from acquisition certain parcels of land, many of them on the same block as defendant-appellant's property is located on. These parcels, of course, belonged to the University.

APPENDIX E

On June 10, 1968, a copy of the *University of Chicago Record,* which claims to be an official University publication states:

> "The South Campus, bounded by 60th Street, 61st Street, Cottage Grove Avenue and Stony Island Avenue is currently the subject of an urban renewal plan under which substantially all of the land not presently owned by the University will be purchased by the University from the City. The University has owned about 43% of the land in south Campus for 50 years.

At the present time the University owns about 60% of the land in the South Campus; it is devoted almost exclusively to such academic buildings as the Law School, the School of Social Service Administration, Burton-Judson Courts, Midway Studios, Center for Continuing Education, the Industrial Relations Center, National Opinion Research Center, the Orthogenic School and so forth. Of the 170 registered students who lived in South Campus in the Autumn Quarter of 1967, a number live in University-owned buildings including married student housing apartments and the Plaisance Hotel. None of the University's holdings in South Campus is scheduled for demolition under the Urban Renewal Program."

Thus, although the area was declared slum and blighted and warranted clearance, apartment buildings owned by the University will be spared. Some of these same apartments are located on the same block as defendant-appellant's. However, appellant's building, will, if the City is successful, be demolished.

APPENDIX F

It might be argued that appellant's building warrants demolishing because of its condition. Appendix F is a report prepared by W.W. Vincent and Co. dated September 17, 1963 showing the insurable value of the property to be $111,000.00, the condition of the building to be good and noting that since December, 1960, she has spent $45,000 reconditioning the building. Exhibit F also includes a certificate of inspection of the City of Chicago dated June 2, 1966 showing "no violations."

* * * * *

It is significant that none of the preceding facts quoted from the Appellant's brief was in any way contested or denied by the City in its reply or in the oral argument.

It is most ironic to note that while this *amici* brief was in preparation, newspaper articles appeared in Chicago papers regarding the plans of the Federal Government for the rehabilitation of Woodlawn. The first few paragraphs of such an article written by Thomas M. Gray which appeared on page 3 of the *Chicago Sun-Times* on May 26, 1972 under the headline "Vast Federal Rehabilitation Planned For Woodlawn" are as follows:

> "Woodlawn, the deteriorated community just south of the University of Chicago that is filled with vacant, abandoned buildings, is scheduled for a massive federal rehabilitation effort, it was revealed Thursday.
>
> "Federal funds are available for the rehabilitation of buildings containing 1,159 apartments, said John L. Waner, Chicago area director of the U.S. Department of Housing and Urban Development.
>
> "Federal officials already have approved buildings with 824 units for rehabilitation, Waner said, and applications for another 335 units are under review.
>
> "Funds are being reserved under HUD's Project Rehab, an effort to put large sums of rehabilitation money into select areas where it might arrest blight before it spreads.
>
> "56 million for Chicago
>
> "Altogether, Waner said, Chicago already has been approved for $56 million in Project Rehab funds.
>
> "In Woodlawn, he added, 'we are now working with the Department of Urban Renewal of the city of Chicago and The Woodlawn Organization in attempting to designate specific blocks throughout Woodlawn to concentrate the rehabilitation efforts.
>
> " 'Our eventual goal will be to . . . reverse the neighborhood's continued trend toward deterioration.'
>
> "Waner said another 126 units are presently under rehabilitation in Lawndale, on the West Side, using Project Rehab funds and another 226 units are in process."

The aforesaid March, 1962, study conducted by the City of Chicago was based upon the 1960 United States Census charts relating to housing. As stated earlier in this brief, the survey showed that the "South Campus" area was the least "dilapidated and deteriorating" of all of Woodlawn, and that it was instead the area further south than "South Campus" which was "slum" and "blighted". (Figure 2)

More specifically, most of the "South Campus" area was shown to be "dilapidated and deteriorating" the minimum of 0.0% to 19.9%, and only one-fourth "dilapidated and deteriorating" 20% to 49.9%. These figures from the United States Census of Housing established the entire "South Campus" area to be below the "slum and blighted" level of 51%, and therefore not eligible for clearance.

The University of Chicago, however, was interested only in the area contiguous to its main University facilities. Therefore, while for the University's benefits, the "South Campus" area was relegated to the bulldozer, the other areas of Woodlawn, after 12 years of further deterioration, are now to be granted Federal funds for rehabilitation. Although the buildings in the "South Campus" area were shown to be in much better condition than the rest of Woodlawn and although the University already owned 60% of the land in this area, the property owners within what was euphemistically referred to as the "South Campus" were not offered such rehabilitation loans.

The *amici curiae* recognize that urban renewal is a legitimate governmental operation. They also recognize that while the actions of Government may not always be wise, such actions do not ordinarily require judgments by courts but rather actions of voters. Where, however, the actions of governments, be they pragmatically wise or

unwise, interfere with the constitutional rights of the citizens, the courts provide a citizen's prime protection against abuses. The lack of a notice of the anticipated declaration of a slum and blighted area and of an opportunity to be heard in that proceeding violates the due process clause of the 14th Amendment of the United States Constitution. Though urban renewal may be a good thing, the process loses its validity if a citizen whose land is to be taken in the renewal process is allowed to voice his objection only at a time which makes that objection ineffectual.

A fair amount has been written about urban renewal practices. Some writers have addressed themselves to the specific question raised by the BLANKNER case. Wilton A. Sogg and Warren Wertheimer are the authors of a chapter of a book devoted to urban renewal matters; they write as follows:

> "A public hearing is potentially more effective than a judicial proceeding in accommodating the needs of the program to private interests. Such a hearing provides an opportunity for the presentation of objections and suggestions bearing upon the desirability as well as the legality of public action. Furthermore, while a court is not empowered to prescribe alternatives to official action declared unlawful, a public hearing before a body other than a court may result in the modification of proposed action or the adoption of a new plan. Hearings held at early stages in the plan are sometimes ineffective because of lack of public interest and insufficient development of issues. The likelihood of change, however, is greater during the earlier stages while the plan is more flexible. It is commonly believed that hearings, whenever they occur, in fact exert little or no influence on the decisions of the body before which they are held, but provide only a form for the venting of hostility toward the plan.

The failure of hearings to be more effective may be attributable to inadequate legal representation of small owners, to unwillingness of administrators to modify a course of action once adopted, especially since hearings are usually held at a late stage in the progress of the plan, and to the common absence of statutory provisions requiring findings and other procedural formalities."

["Legal and Governmental Issues in Urban Renewal", (by) Wilton S. Sogg and Warren Wertheimer, in *Urban Renewal; The Record and the Controversy* (edited by James Q. Wilson, The MIT Press, Cambridge, Mass., 1966; reprinted from *Harvard Law Review* Volume 72, page 126, et seq., 1959, in book form at pages 139-140)]

In the same volume edited by James Q. Wilson, a chapter appears entitled "Urban Renewal in Newark" by Harold Kaplan. That chapter outlines the "behind the scenes" preparation of an urban renewal area which makes the absence of due process notice and hearing to the property owners all the more disturbing. The quotation of a few paragraphs from that article will give the Court a flavor of practices which sadly are not confined to New Jersey:

"The key question about any redevelopment site was whether a private firm could make a profit on middle-income housing in that area . . . there seemed, in fact, to be an inverse correlation between the degree of blight in an area and its acceptability to FHA and the redevelopers."

[at page 237]

"None of the institutions was any more willing to redevelop sites with hard core slums than private home dwellers would have been. Once again, the Newark Housing Authority found itself unable to select sites solely on the basis of the degree of blight,

> the presence of natural boundaries, or the observance of mixed land use and other persistent blighting factors."
>
> [at page 244]

The Kaplan article also indicates the inability of elected officials, short of the public pressure which hearings would inevitably bring about, to raise questions regarding the usefulness and advisability of a particular urban renewal project. He describes the process as follows:

> "After the authority announces a project and the Mayor approves an application to URA for survey and planning funds, the pressure on the City Council to add its assent is overwhelming. By this time, to quote one informant, the project is 'frozen'. The Councilmen must consider the proposal on a 'take it or leave it' basis; rarely have they seriously considered 'leaving' a proposal approved by NHA and the Mayor."
>
> [at page 254]

and

> "The City Council must eventually prove an urban renewal plan and a relocation plan, and the Central Planning Board (CPB) must declare the entire area blighted. But such action has usually been routine. As members of the Council and CPB have said, effective local review of clearance proposals can occur only at the very outset of the proposal."
>
> [at page 254]

Commenting on the ultimate decision after all of the groundwork has been done, Kaplan remarks:

> "At this point the time, energy and money already expended preclude serious local review."
>
> [at page 255]

In short, a single homeowner has no chance of stopping an urban renewal project once the City government and

the private redeveloper have firmly committed themselves to the project. As is pointed out in the appellant's Petition for the Writ of Certiorari, a traverse in the condemnation suits is a losing proposition. If the courts are to afford a property owner procedural due process in the area of urban renewal, the notice and hearing must take place at sometime well before the forces of bureaucracy and redeveloper's economic gain have become immovable in their positions.

It must be remembered how very different the condemnation proceeding is in an urban renewal project from one involving a condemnation for a road, a school, or another public use. In the latter instances, a successful traverse can be made against the taking on the grounds that the public body does not need the land for a public purpose or that the site is unsuitable for the project anticipated. In an urban renewal situation, there is no particular public purpose for the land except the eradication of the allegedly "slum" area. Under existing law, an attack upon the entire concept of an urban renewal project can only be made in the condemnation proceedings. Under Illinois law, landowners have no standing to sue at an earlier stage in the process (*Ross* v. *Chicago Land Clearance Commission,* 413 Ill. 377; 108 N.E.2d 776 (1952).). By the time a single property owner with sufficient courage to resist reaches the condemnation stage, much of the property in the area has previously been acquired and wrecked. The landowner is thus left with the impossible burden of proving that the area was not slum and blighted to begin with and that it has not become slum and blighted as a result of the urban renewal process which has progressed for sometime without the landowner having any right to effectively protest such action.

In the case at bar, the burden of an individual homeowner is made even more difficult since the private institution which will eventually receive the land already owned substantial numbers of buildings which it could maintain or not maintain at will. The temporary non-maintenance of structures in order to make them appear slum and blighted is certainly to the interest of a private institution which if such a determination is made will receive the aid of eminent domain in order to acquire the entire area. After the area is designated as slum and blighted, the same private institution can begin to recondition and remodel its buildings—a luxury which is not accorded those property owners whose buildings will be reduced to rubble.

During the early years of this century, the United States Supreme Court spent much of its time dealing with the redress of unconstitutional economic wrongs arising out of the Governmental attitude of *laissez-faire*. The interpretation of the courts in according workers their economic rights was an especially significant example of the expanded jurisprudence in those areas. In the more recent decades of this century, the court has principally addressed itself to personal rather than economic wrongs. During this time, Federal, state and local governments have become more activist and have taken a more prominent role in regulating and affecting the economic life of individuals. As noted earlier, the United States Supreme Court and other courts have for the most part upheld the general concept of the expansion of governmental powers into these areas. The time has now come, however, when after some years of experimentation the projects and concepts are beginning to show both their good and bad sides. The United States Supreme Court while finding

the general concept of urban renewal constitutional has not been called upon to examine some of the particular practices which have taken place in the name of urban renewal. This case, therefore, brings to the Court an opportunity of examining whether procedural due process protections are accorded citizens in urban renewal. Landowners, throughout America, who find themselves potentially or actively within renewal areas must have clarification and direction regarding their constitutional rights to effectively object to such projects at a meaningful stage.

The reply of the City of Chicago in opposition to the granting of a Writ of Certiorari indicates to the Court that in the traverse Miss BLANKNER'S objections, however comprehensive and firm, were not sufficient for the Court to stop the City's condemnation of her property.

Her later briefs will probably expand further and add to the sound legal and practical reasons for her position as set forth in her petition, such as the fact that to date no one knows how much counter-evidence would be needed to persuade the Court to stop the City, because to date no property owner has succeeded in this hitherto impossible feat.

Indeed, here is one of the many reasons why this typical case cries out for attention and decision by the Court as the only means "to establish justice" and so at long last to enforce the Constitution in the field of slum-and-blight condemnation where the Constitution has been forgotten.

After years of condemnation, it is only in the BLANKNER case that the issue of the definition of "due process" requirements in urban renewal matters has finally reached this Court. How many owners of property have desired answers to the questions at bar, but have instead suffered in silence with condemnation or settlement rather than

face the practically unchallengeable condemning body? How many would risk the value of their property in legal fees to argue due process? Not many. The case at bar presents such an individual and such an issue. We look forward to presenting to the Court our *amici* brief if, as we pray, the Court grants Miss BLANKNER the full hearing on these important issues which she has so far been denied.

CONCLUSION

For the reasons set forth herein it is respectfully urged by *amici curiae* that this Court grant the Petition for Writ of Certiorari.

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FILE COPY

No. 71-1549

FILED
JUN 15 1972
MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM 1971

FREDERIKA BLANKNER,
Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,
Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 41867

REPLY TO BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

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No. 71-1549

FREDERIKA BLANKNER,

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Appeal From The Supreme Court of Illinois
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REPLY TO BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

INTRODUCTION

As stated previously in our Petition for Writ of Certiorari and reviewed here for the convenience of the Court:

1. Under Illinois law, an area which is slum and blighted can be condemned for urban renewal purposes and sold to private individuals and institutions for redevelopment. Petitioner does not challenge this practice. Petitioner does challenge the procedure by which the area is determined to be slum and blighted on the grounds that the procedure

amounts to a Bill of Attainder and is violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

2. The Illinois procedure is as follows:

(a) The Department of Urban Renewal declares an area to be slum and blighted. No hearing is required or provided whereby landowners can cross-examine witnesses or present evidence, nor is a notice given to property owners. In *City of Chicago* v. *Zwick*, 27 Ill. 2d 128, 1963, the Illinois Supreme Court held that an owner did not have the constitutional right to a hearing before the Urban Renewal Board prior to its designation of an area as slum and blighted, because the Board hearings are legislative in character. The Urban Renewal Board thus acts as plaintiff, judge and beneficiary in this proceeding without hearing the landowners.

(b) The resolution is then approved by the City Council. Once again, the property owners are not given notice, nor do the property owners have a right to a hearing before the City Council.

(c) Property owners in the area are given an opportunity to sell their property to the City; should they refuse to do so, a condemnation suit is brought against each owner individually.

(d) In the suit for condemnation, a property owner of the area can deny that the area is slum and blighted. But, the burden of proof is on him or her to show that it is not slum and blighted. The Illinois courts have held that the landowner is thus given an opportunity to prove that the area is not slum and blighted.

I. The Resolution of the Urban Renewal Board and the Ordinance of the City of Chicago Finding the Area to be Slum and Blighted was a Bill of Attainder.

Appellee City of Chicago claims in its brief that *United States* v. *Brown;* 381 U.S. 437 is not in point. In that case

the Court held unconstitutional a statute which barred members of the Communist party from holding union positions. The Court distinguished between that statute and one which would set forth "a generally applicable rule decreeing that any person who commits certain acts or possesses certain characteristics shall not hold union offices." Such a law would be constitutional.

In the present case, the resolution of the Department of Urban Renewal and the ordinance of the Chicago City Council decreed that a particular area was "slum and blighted". But the resolution and ordinance did not set forth generally applicable rules decreeing that any area which contains certain characteristics shall be slum and blighted and therefore could be cleared and redeveloped.

We reiterate here all that we have claimed regarding the fact that the resolution of the Urban Renewal Board and the ordinance of the City Council constitute a Bill of Attainder, none of which the City has successfully denied.

II. Placing on the Owner the Unreasonable Burden of Proving That an Area is not Slum and Blighted Is a Violation of Due Process.

Respondent City of Chicago further claims that:

> "The burden of proof is upon the condemnor at all times; once however, a prima facie case has been made, the owner has the burden of going forward. The owner need not prove that the area is not slum and blighted, only that the condemnor's case is unsupportable."

The Illinois Supreme Court in its decision in this case showed how illusory this burden of proof is. The Court in its opinion emphasized that the mere introduction into evidence of the resolution of the Department of Urban

Renewal and the ordinance of the City Council approving the resolution completed the City's *prima facie* case. That is certainly not too heavy a burden for the City to bear with its financial resources, lawyers, and city planners. The burden, as the City concedes (p. 4) is then on the landowner to show that "the condemnor's case is unsupportable."

Since the condemnor's case is that the area is slum and blighted, the owner must prove that the area is not slum and blighted in order to show that the condemnor's case is unsupportable.

This proof is clearly impossible for the ordinary landowner. As pointed out in petitioner's initial brief, the area in question consists of 105.6 acres made up of 266 structures with a total of 2592 dwelling units. Petitioner, who is retired on an inadequate pension, was awarded $40,750. Her mortgage on the property was $32,000. Yet, even deprived as she was by the City of the modest financial backlog of her property, nevertheless she was expected to amass evidence that the area was not "slum and blighted." Adding to the difficulty of this onerous task is the definition of slum and blighted, which at best is broad and general.

Section 3(i) of the Urban Renewal Consolidation Act, Chapter 67 1/2 §91.103(i), Illinois Revised Statutes (1968) provides:

> "Slum and Blighted Area means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout

or any combination of these factors are detrimental to public safety, health, morals or welfare."

Be it noted that because of the methods used in Illinois the urban renewal condemnation procedure is always unfair in that it does not give the property owner the even chance required for justice. In this regard this case is particularly important to the Court because the petitioner's set of facts highlights the inequities and defects of the present usages, and shows them in bold relief.

Furthermore, it cannot be overly emphasized that eminent domain for the purpose of "slum clearance" is substantially different from the historical uses of the condemnation purposes of the state. In "slum clearance" the property cleared is frequently resold to private parties. Therefore, the danger of misuse of the power is far greater than would be the case in condemnation for the purposes of schools, post offices, highways etc.

Respondent states that *Speiser* v. *Randall*, 357 U.S. 513 (1958) and *First Unitarian Church* v. *County of Los Angeles*, 357 U.S. 545 (1959) does not apply because there was no criminal liability at issue. However, the urban renewal law is enacted under the state's police powers to protect the public safety, health, morals or welfare of the community. *De facto* if not *de jure*, the landowners in this area are being punished by a land clearance program for owning property in an allegedly slum and blighted area.

III. Berman v. Parker is not in Point.

Respondent City of Chicago claims that *Berman* v. *Parker*, 348 U.S. 26 (1954) supports its position. However in *Berman* v. *Parker* there was no denial that the area was slum and blighted. The only issue which the Court was

called upon to rule was whether an area which is slum and blighted may be condemned and sold for private development. The Court held that it could. Ours is an entirely different issue not heretofore decided by this Court. Petitioner does not challenge this practice. Petitioner does challenge the procedure by which the City of Chicago declares an area to be slum and blighted. It is done by legislative fiat in lieu of judicial determination and without hearing from the actual people whose property is being taken.

IV. Petitioner was not given Notice or Hearing before Subcommittee of Chicago City Council.

The City in its Reply Brief in effect confirms the petitioner's contention that she was not afforded notice or hearing in respect to the meetings when the area where her property lies was arbitrarily declared to be slum and blighted and then designated for re-sale to the University of Chicago.

As specified in her petition (p. 3), the two sessions at which the fate of the area and of her property was decided took place in 1964.

One was the meeting of the Board of the Department of Urban Renewal on October 8, 1964, at which the area was found to be slum and blighted. And the other was the meeting of the Chicago City Council on November 16, 1964 when the Chicago City Council adopted the ordinance approving the resolution for slum clearance and redevelopment. (A copy of the ordinance can be found in Appendix C of petitioner's original brief, pp. 14a-15a).

Petitioner claims that she was deprived of due process of law in that she was not afforded notice or hearing on the occasion of either of these two decisive meetings.

And the City does not deny this. Indeed the one "notice" that the City claims to have given the petitioner, prior to the initiation of the present proceedings, was in 1966 (p. 5). This was for a meeting of the Committee on Planning and Housing of the Chicago City Council two years after the Board of the Department of Urban Renewal and the Chicago City Council had designated the area for slum clearance. This meeting was therefore two years too late to protest the fundamental decisions regarding the taking of the petitioner's property.

In addition, since the City has selected this one meeting for prominent mention, perhaps it should be observed that there is nothing in the record of the trial court or in the record of the Illinois Supreme Court to indicate that such a "hearing" was held or to give it importance. This is the first time the City has mentioned such a "hearing". Petitioner first learned of the "hearing" from respondent's brief (received June 2, 1972). Notice was not sent to petitioner concerning this alleged "hearing".

Respondent states that notice of the "hearing" was published June 24, 1966 and June 28, 1966 in the *Chicago American*. At that time, there were five daily newspapers published in Chicago: *Chicago Sun-Times, Chicago Daily News, Chicago Tribune, Daily Defender,* and the *Chicago American*. The law cannot make it incumbent for the petitioner to read all five newspapers every day in order to prevent her property from being seized by the City. There is no evidence that even one owner attended this "hearing".

It should be observed that the "notice" is false on its face because it leads one to believe that these were the first considerations and decisions regarding the project,

when in fact all plans and proposals for the taking of the property had already been made and completed without any participation on behalf of petitioner or other property owners in the area to be affected. (For text of "notice" see Appendix A)

Furthermore, the "notice", even had it been timely instead of two years too late, was not an adequate notice to the petitioner.

It was totally inadequate instead, in that it was in no way personal. It made no mention of the petitioner's name or the address of her property. As previously observed, no notice was sent to her by mail as required by law for a notice to be adequate.

Petitioner was the owner of record of the property at that time. If the City wished to provide a fair hearing before the Committee on Planning and Housing and to permit all interested parties to present evidence, it could have at least notified the owners of the meeting by mail. This was an urban renewal project costing many millions of dollars. The cost of the stamps would not be an unreasonable burden on the City.

As can be seen from the foregoing facts, now the City has confirmed that the petitioner was deprived of notice and hearing and therefore of due process of law in relation to the fundamental decisions for the taking of her property, just as she has contended.

Notice, hearing and right of immediate appeal of fundamental decisions are all essentials of due process of law and all three are lacking in this case.

V. Petitioner was not given a Hearing at the Trial.

Respondent City of Chicago claims that petitioner was given a hearing at the trial. As noted above, the resolution of the Department of Urban Renewal and the ordinance of the City Council creates a presumption that the area is slum and blighted. Because of the enormity of the task of rebutting this presumption, it is for all practical purposes an irrebuttable presumption.

The burden which is imposed on the property owner is so onerous and unreasonable as to amount to a denial of due process.

When any requirement is unreasonable to a high degree it violates a basic concept of fairness and therefore it violates due process.

VI. The Petitioner Raises Questions of Substance not Raised before.

Finally, respondent claims that petitioner raises no questions of substance, either federal or non-federal, that have not already and repeatedly been decided adversely to the petitioner's position. Yet, the respondent has been unable to cite even one case which has considered the petitioner's position and issues, or which has been decided adversely to petitioner's position.

CONCLUSION

Respondent City of Chicago's brief in fact admits the complete lack of notice and hearing at the time the fundamental and irrevocable decisions for the taking of petitioner's property were made.

The sole notice that the City claims to have given the petitioner was one published in a newspaper two years later, which is referred to in Respondent's brief (p. 5) and printed in this reply (Appendix A). And this single notice is insufficient on its face to give petitioner any actual notice of what was being done in her property.

It was printed in June, 1966, two years after all the basic decisions had been made and after the City's *prima facie* case, sustained by the Illinois Supreme Court for the taking of her property, had been completed in 1964 through the determination by the Department of Urban Renewal on October 8, 1964, that "a certain area adjacent to the campus of the University of Chicago was a slum and blighted area and should be acquired for redevelopment" and after the ordinance of the Chicago City Council adopted November 16, 1964, had "approved the Department's determination." (See Decision of the Illinois Supreme Court, in Petition for Writ of Certiorari, Appendix A, p. 2a and 1a).

This newspaper "notice" was totally inadequate in that it made no mention of the petitioner's name nor the address of her property and was never mailed nor in any way delivered to the petitioner.

In the light of the various confirming facts provided by Respondent in his reply we reaffirm that the petitioner's

property has been taken unconstitutionally in violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.

Accordingly petitioner respectfully urges this Court to grant its Writ of Certiorari to review the fundamental constitutional questions raised regarding the taking of petitioners property without due process of law, through a Bill of Attainder, under the guise of urban renewal "slum clearance" for the declared mutual multi-million dollar financial benefits of a private corporation and the Department of Urban Renewal. (Petition for Writ of Certiorari, pp. 15-17)

Respectfully submitted,

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APPENDIX A

Text of "Notice" published in
the *Chicago American*,
June 24, 1966 (p. 27) and
June 28, 1966 (p. 17)

LEGAL NOTICE

TO WHOM IT MAY CONCERN:

Notice is hereby given that beginning at 10:30 a.m. o'clock on July 6, 1966, a public hearing will be held by the Committee on Planning and Housing of the City Council of the City of Chicago in Room 201A-City Hall, Chicago, Illinois to inform the community of the proposals of the City of Chicago to undertake a project pursuant to the Urban Renewal Consolidation Act of 1961 with Federal financial assistance under Title I of the Housing Act of 1949, as amended, designated Slum and Blighted Area Redevelopment Project 60th-Cottage Grove; and involving the acquisition of parcels of land in the area legally described below; the demolition or removal of buildings and improvements thereon; the installation, construction or reconstruction of streets, utilities and other site improvements; making the land available for development or redevelopment by private enterprise, or public agencies as authorized by law; install, construct or reconstruct schools, parks, and-or playgrounds; and carrying out of plans in accordance with in urban renewal plan pursuant to the urban Renewal Consolidation Act of 1961.

The legal description of Redevelopment Project 60th-Cottage Grove is as follows:

(legal description)

The program of the Department of Urban Renewal of the City of Chicago with respect to the relocation of families, individuals, and business from the Properties located within such project area.

Any person or organization desiring to be heard will be afforded an opportunity to be heard at said meeting. Dated: June 24 & 28, 1966.

ALDERMAN
ARTHUR V. ZELEZINSKI,
Chairman
City Council Committee on
Planning and Housing
City of Chicago

MOTION FILED
JUN 26 1972

71-1549

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Supreme Court, U.S.
FILED
JUN 26 1972
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

No. A-1026
OCTOBER TERM, 1971

FREDERIKA BLANKNER,
Petitioner-Appellant,

vs.

CITY OF CHICAGO, A Municipal Corporation,
Respondent-Appellee.

Appeal from the Supreme Court of Illinois
Docket No. 41867

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

No. A-1026

OCTOBER TERM, 1971

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, A Municipal Corporation,

Respondent-Appellee.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

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PRO SE MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER-APPELLANT'S FOR WRIT OF CERTIORARI

Roman C. Pucinski, as a private citizen of the State of Illinois, County of Cook, City of Chicago, and as United States Congressional Representative for the 11th Congressional District, hereby respectfully moves for leave to file the attached pro se brief amicus curiae in this case. The consent of the attorney for the Petitioner-Appellant

has been obtained. The consent of Respondent-Appellee has not been obtained. In support of his request movant cites the following grounds:

1. He is and has been for 14 years a member of the United States House of Representatives representing the 11th United States Congressional District of Illinois located in Chicago. His constituents represent a broad cross-section of urban residents vitally concerned with the stability of urban communities and *the instability caused in large measure by inequitable and wholesale demolition of neighborhoods under the guise of the "public good". This constituency is subject to the same* **arbitrary** use of condemnation power so evident in this case. The 11th Congressional District is located geographically less than ten miles from the site of the real property which is the subject of the instant cause. The residents of the 11th Congressional District bear many resemblances to the residents of the condemned area. Many of the residents of Movant's Congressional District are poor. Many live in congested areas and in apartment buildings. Many belong to minority, ethnic and racial groups. Many have lived in the same neighborhood all their lives, and have thereby added a measure of stability to their own local communities and the larger community of the City itself. Many of these people would have no place to go if forced to move because of condemnation proceedings. And such proceedings are a real and existing threat to the people of the 11th Congressional District. Many neighborhoods located in the 11th Congressional District could easily be classified as "slum and blighted" under an interpretation of Chapter 67½ § 91-103 (1) Illinois Revised Statutes. Based on the criterion promulgated by that Section Movant estimates that a majority of urban neighborhoods more than ten

years old could be declared slum and blighted and the proper subject of condemnation proceedings. It is a realistic demonstration of such an arbitrary and capricious result which Movant will provide if leave to file a brief amicus curiae is allowed. The concerns and interests of this section of the public is at present unrepresented by the parties and amici in the case at bar.

2. The case at bar relates to the procedural requirements prior to condemnation in urban renewal projects. Since the end of World War II, legislation has been directed toward providing the financial resources to local governments to create a wholesome urban environment and delay urban blight. This legislation, beginning with the Housing Act of 1949, is an area in which Movant is well versed and uniquely capable of providing insights. None of the other parties has attempted to utilize the intent of Congress in establishing the machinery on which the present day system of urban renewal is based as it related to this case. Further Movant is vitally concerned that the intent of Congress as evidenced in this legislation be carried out as intended by Congress. The Movant feels that these insights may well be helpful in disposition of the case at bar.

3. Movant further states that the procedures of the City of Chicago, Department of Urban Renewal discriminate against condemnees in areas which are to be designated "slum and blighted", in relation to condemnees in "conservation areas". The procedures followed in "slum and blighted" areas do not provide for personal service and hearing before an area is so designated. In the other instance, however, personal service and hearing is provided prior to *action* of the municipality. Movant will show that this distinction is without basis and deprived

petitioner-appellant, and all other condemnees in like situation of equal protection of the law in violation of the 14th Amendment of the United States Constitution. This is an issue previously presented, expansion of which may well be dispositive of the case at bar.

Wherefore, Movant respectfully requests leave to file with this Honorable Court his brief, which because of the shortness of time is printed following this motion.

IN THE

SUPREME COURT OF THE UNITED STATES

No. A-1026

MAY TERM, 1972

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, A Municipal Corporation,

Respondent-Appellee.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

PRO SE AMICUS BRIEF CURIAE

The amicus represents himself and over *425,000* persons residing in the 11th Congressional District. This constituency is vitally interested in the uses and abuses of governmental power through the utilization of the power of eminent domain. Included here are both large and small property owners, businessmen and renters who are concerned with the stability of communities in a time when instability threatens to virtually destroy the very fabric of our urban society.

The case at bar relates to procedural requirements required of local public bodies prior to condemnation in urban renewal projects. The Constitution has provided the right of eminent domain to the states, and Congress has implemented the use of this power by providing funds for urban renovation and rehabilitation. It is unquestioned that urban blight and decay must be stopped, but this Honorable Court must be aware that often in the name of "public good", such apparently worthwhile objectives as urban renewal literally destroy neighborhoods, traditions, family structure and result in "urban dislocation", not "renewal", to the benefit not of the "public" but rather, as in the instant case, to the benefit of large institutions and moneyed interests.

1. The instant case is a prime example of the abuses which have been inherent in urban renewal projects and eminent domain proceedings in local communities across the nation. Presented below are examples of the abuses which appeared in this case.

a. Gross inconsistencies and apparent misrepresentations appear on the face of the Report of the Department of Urban Renewal dated October 1, 1965, used as evidence to establish a prima facie case that the area in question was slum and blighted. This document indicated at one point that 100% of the structures in the area were delapidated. Later in the *same* report, it is indicated that 20 structures containing 123 living units were without *any* deficiencies. This evidence was presented in a brief filed by petitioner-appellant in the trial court and was totally ignored!

b. Further, in a map dated September, 1965 prepared again by the Chicago Department of Urban Renewal, the

condition of every building in the project area is designated. Three of the buildings, one owned by Petitioner-Appellant, and the other two owned by the University of Chicago, are designated as either "structurally sub-standard to a degree *requiring* clearance" or "obsolete, not suitable for improvement or conversion" and "deteriorating because of a defect not correctable by normal maintenance". In fact, however, all of these buildings are still standing, house forty families, have been rehabilitated and are in good condition. In fact, Petitioner-Appellant's building received a certificate of inspection *from* the City of Chicago indicating "no violations". This is a misrepresentation of fact by the City which, if proven, certainly would have been sufficient to cast doubt on the basis of the "slum and blighted" designation and rebut the prima facie case established by Respondent-Appellee in the trial court. Yet, Petitioner-Appellant was not given the opportunity to present this evidence in open court.

c. Further, there is evidence that in the instant case, the taking was not in reality for the "public purpose" of slum clearance but for the very "private purpose" of making land available to the University of Chicago, a private institution, for its own expansion. Aside from providing explanation for the misrepresentations of fact hereinbefore noted, this motive would explain the strange change in the results of studies of the *same area* made within three years of each other. In 1962, the City of Chicago commissioned a study of Petitioner-Appellant's community. The results of this "in-house" document actually showed that the community in question was the least dilapidated of the area immediately north of the University of Chicago. In fact, this study further indicated that *less* than 20% of the housing units were dilapidated or in need of major repair.

Query the subsequent study by the City of Chicago in 1965, only three years later, showing that 100% of this same community was "slum and blighted", and slated for condemnation. Amicus contends that a change of this magnitude is not indicated by any other known statistics for the area, and in fact that such a dramatic change in three years is highly improbable.

d. Further, Amicus contends that these abuses of the "right" of eminent domain are made possible in part by the overly broad legislation which "defines" the criteria for a slum and blighted area.

Chapter 67½ §91.103(i) Illinois Revised Statutes.

(i) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, *overcrowding, faulty arrangement or design, lack of* ventilation, *light* and sanitary facilities, *excessive land coverage, deleterious land use or layout* or any combination of these factors, are detrimental to the *public safety, health, morals or welfare.*

In a four block stretch on Chicago's lakefront, on North Sheridan Road, there exists a wall of high rise buildings which front on Lake Michigan. These buildings have been constructed in rapid succession over a period of fifteen to twenty years. The net effect of this extraordinary development has been to destroy public beaches and parks, block any view or access to Lake Michigan, cause a major traffic problem which daily affects a major percentage of the residents of the North side of the City, create a total lack of parking space for residences of the immediately surrounding community and place a major strain on city and public

services in the area. During the past five years, at least one private plane has collided with one of these buildings causing extensive property damage and death and during the same period numerous sniper reports and a major increase in crimes have been reported.

Planners, architects, conservationists, politicians and citizens have attempted to solve this problem or at least moderate the pace of development which through short-sighted planning has produced an unreasonably high density of population, insufficient open space, inadequate parking and poor design of buildings. This high rise wall has virtually destroyed a once beautiful lake front area. Under §91.103(i) previously quoted, the solution is obvious: This community should be designated a *slum and blighted* area because the buildings and improvements in this area by reason of *overcrowding, faulty arrangement and design, excessive land coverage,* deleterious *land use and layout* and any combination of the above are detrimental to the public safety, health and welfare. This will not occur because these buildings contain $50,000 condominum apartments and the area is among the most expensive and prestigious in Chicago. Amicus brings this example as an indication of the overly broad discretion allowed the City of Chicago by State statute. This is discretion which can only be effectively checked by the courts. It is the unfortunate history of urban renewal, however, that the courts have been unwilling to limit the unconstitutionally broad powers of eminent domain as exercised in Chicago even in the face of demonstrable misrepresentations and contradictions of fact and law, as in the instant case.

2. The broad discretion outlined by statute and the consequent misuse of power by the Respondent-Appellee have

a greater effect than the deprivation of Petitioner-Appellant's property without due process of law. The abuse of this power and callous use through misrepresentation and disregard of individual rights provides evidence of a continuing gap between the citizen and his government. In few areas of governmental function, do citizens come into closer contact with their elected or appointed officials. The rightful cynicism and distrust of the citizenry that result are often impossible to correct. The Constitution and this Honorable Court exist in large measure, to keep a check on such abuses of power by the executive and legislative branches. The Amicus, as a citizen and duly elected representative of the people, urges this Court to review this case and attempt to set procedural due process guidelines on the taking of private property so that trust and faith in our system can be reinstated. We cannot govern if our citizenry has, through erosions of public trust as in the instant case, lost all confidence in the machinery of the Courts for redress of wrongs. The Amicus' concern in the instant case goes beyond the individual injustices outlined above. It is with Federal funds specifically earmarked for urban redevelopment, municipalities across the nation have perpetrated and continue to perpetrate a distorted and destructive urban "renewal." The Housing Act of 1949, the basis for "urban renewal" as we know it today, sets out in its preamble the purposes and objectives of the legislation:

"The general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization

as soon as feasible of the goal of a decent home and a suitable living environment for every American family thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation."

It is Amicus' position that we have strayed from the objective of a "decent home and suitable environment for every American family." In fact, the results of "urban renewal" have been the destruction of homes and suitable living environments. Carlos Campbell, Special Assistant to the Assistant Secretary for Metropolitan Development, Department of Housing and Urban Development, was quoted as saying that Congress has, to date, authorized over $8 billion for urban renewal which has consequently demolished 440,000 dwellings, while providing only 125,000 new units in the low and moderate income categories, *The Legal Lawbreakers,* Citizens Advocate Center (Wash., 1971). Furthermore, the National Commission on Urban Problems headed by former Senator Douglas projected that during the next five years, governmental action will again destroy at least twice as many dwelling units of the poor and near poor as it will produce, *Building the American City,* National Commission on Urban Problems, Washington, p. 83 (1969).

This same pattern, apparent nationwide, is also true of Chicago, where since 1948, 29,272 units have been demolished through the urban renewal program and in their place 11,000 units have been constructed, *Urban Renewal Chicagoland,* p. 23 (July, 1970). Those units which have been constructed are almost invariably outside the price range of whose who were displaced by the project. However, most of the land was sold to institutions because of

the tremendous profit the Department of Urban Renewal can gain through the 112 credits.

It is time for this Honorable Court to reexamine urban renewal. Much time has past since your examination and approval in *Berman* v. *Parker*, 348 U.S. 26, of the massive approach to urban redevelopment. It is Amicus' view that the governmental attitude toward "slum clearance" has become so encrusted that we have lost that open-mindeness so essential to a fair and equitable administration of government. The intent of Congress in enacting the aforementioned Housing Act of 1949, and all such subsequent legislation, was to provide funds for the renovation and renewal and rebirth of our communities. This intent has been unheeded. The abuses can be stopped most effectively through judicial action and protection of individual rights which have been trampled in our misguided desire to "rebuild" the cities. There must be a judicial redefinition of "public purpose" that insures individual property rights. Urban renewal is self-defeating if all sense of belonging and societal stability is thereby threatened. This has been the recent history of urban development. "Changing" neighborhoods are destroyed, the low and middle income persons displaced move to another community, which is soon subject to the same disease, and the process becomes endless. The result is a vacuum. All that remains is low income public housing, very expensive residential skyscrapers and large corporate and municipal institutions. The middle-class diversity and community of the cities has been destroyed. In the end, the public good is best served when individual members of that public are secure in their life, liberty and *property*.

3. As indicated in Petitioner-Appellant's brief, Respondent-Appellee's claim of notice and hearing prior to the

determination of the "slum and blighted" designation was illusory. This is brought into bold relief when compared with the City's notice and hearing requirements in regard to areas designated for "conservation". In the latter instance, City ordinances provide the following procedural steps:

"The Department of Urban Renewal . . . shall have and exercise the following powers with respect to the development, redevelopment and replanning of conservation areas . . . .

"(b) approve *each use* of eminent domain for the acquisition of real property for the purposes, provided that *every property owner* affected by condemnation proceedings *shall have the opportunity to be heard* by the Department *before* such proceedings may be approved;" (Municipal Code, City of Chicago,) 15-7 through (b); emphasis supplied).

These steps insure, through personal notice, that prospective condemnees have the opportunity to dispute and disprove administrative findings before their property is taken. When an area is under consideration for "slum and blighted" designation however, the only notice to the prospective condemnees is through use of a newspaper of general circulation. It has been argued by Respondent-Appellee that personal notice is given prior to court hearing on condemnation of individual parcels, and that suffices. However, it is at the earlier stage, i.e. the designation of the area as "slum and blighted", that the de facto "taking" occurs. This results because, as in the instant case, the courts accept the previous legislative and administrative findings of general slum and blight as the sole criteria for the taking of any individual parcel within that designated

area. Once accepted it is impossible for condemnees, because of lack of resources, etc., to prove that an area as large as that in question is not "slum and blighted."

Amicus contends that personal service and notice of these previous Department of Urban Renewal "hearings", are the minimum requirements for protection of condemnee's rights. And further, that the present system as previously outlined, unreasonably discriminates against condemnees in "slum and blighted" areas, because they are not afforded the same protection as condemnees in "conservation" areas. This practice violates the Equal Protection clause of the 14th Amendment and should be struck down.

CONCLUSION

The issues presented by this case cut across racial and economic lines. *All* urban residents, citizens of our nation, be they black, white, rich, poor or middle-income have the right guaranteed by our Constitution, to be secure in their property. Amicus is sworn to uphold that Constitution, and the rights inherent therein, as is this Honorable Court, from abrogation or outright denial. Abuse of governmental power is an ever present danger. The "public welfare" demands not only that modern structures be built, but that the total "public" be served. The right to live a secure existance, to the greatest extent possible must be extended to the "public", to the individual citizens that comprise that "public". It is now incumbent on this Honorable Court to review and investigate the area of law herein presented to the end that the abuses of government be curbed and corrected.

It is these concerns that Amicus represents in this Brief Amicus Curiae.

Wherefore, for the reasons set forth herein it is respectfully urged by Amicus Curiae that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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MOTION FILED
JUN 21 1972
FILE COPY

No. 71-1549

SUPREME COURT, U.S.
JUN 1972
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1971

FREDERIKA BLANKNER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

MOTION FOR PERMISSION TO APPEAR AND TO FILE BRIEF AS AMICUS CURIAE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1549

FREDERIKA BLANKNER,

Petitioner,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

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MOTION FOR PERMISSION TO APPEAR AND TO FILE BRIEF AS AMICUS CURIAE

Janitors Union, Local No. 1 (hereinafter Janitors Union) moves the Court for permission to appear and to file a brief as amicus curiae in support of the petition for certiorari previously filed herein by Frederika Blankner. Janitors Union has the consent of the petitioner but has been refused the consent of respondent to file a brief herein. In support of this motion, Janitors Union states:

1. The Janitors Union is an unincorporated labor organization with its principal office located in the City of Chicago.

2. The Janitors Union, which has about 10,000 members, is engaged in the representation of janitors who are employed by the owners of apartment houses and other multi-family residential dwellings, and apartment hotels, and is party to collective bargaining agreements with, among others, the Chicago Real Estate Board, the Chicago Residential Hotel Association, and numerous individual owners of residential dwellings.

3. In the past, many dwellings in the City of Chicago where janitors represented by the Janitors Union were employed have been located in areas determined, without specific notice or hearing to the persons affected by such determination, to be slum and blighted, pursuant to the Urban Renewal Consolidation Act, and have been acquired for redevelopment and eventually demolished with the result that many janitors were left unemployed.

4. Many other dwellings where janitors represented by the Janitors Union are employed are located near or adjacent to areas already acquired for redevelopment and are in danger of being similarly acquired and demolished, which will result in the loss of additional jobs and employment opportunities.

5. The Janitors Union believes that because of the administration of the Urban Renewal Consolidation Act without the constitutional safeguards of notice and hearing, dwellings are acquired, demolished and re-sold which are substantial, safe and habitable, in contravention of the purpose and intent of the Urban Renewal Consolidation Act, and which results in the needless deprivation of property and loss of jobs without due process of law.

6. Janitors Union's interest in this case is in seeking to protect the employment rights of persons adversely affected by the administration of the urban renewal laws.

Wherefore Janitors Union respectfully requests permission to appear herein as amicus curiae and to file with the Court their brief which, because of the late date, has been printed following this motion.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

No. 71-1549

FREDERIKA BLANKNER,

Petitioner,

vs.

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Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Illinois

BRIEF OF AMICUS CURIAE IN SUPPORT OF FREDERIKA BLANKNER'S PETITION FOR WRIT OF CERTIORARI

There would be no purpose in restating the facts which have been well stated in the previous briefs filed herein. What we think should be emphasized before this Court is that the action of the Department of Urban Renewal in declaring the area where petitioner's building is located to be slum and blighted was *quasi-judicial in character.* The declaration by the Department that an area is slum and blighted carries with it consequences of the most serious and far-reaching effect for the property owners

and employees in that area. Yet under the Illinois law and procedure neither a hearing nor personal notice to the property owners or other persons who would be adversely affected by such a declaration is required. This we submit is a serious denial of due process of law.

Respectfully submitted,

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No. 71-1549

FILED

In the

Supreme Court of the United States

October Term 1971

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 43867

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

No. 71-1549

FREDERIKA BLANKNER,

Petitioner-Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Respondent-Appellee.

Appeal From The Supreme Court of Illinois
Docket 41867

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

COMPELLING REASONS EXIST FOR REHEARING

Under the authority of United States Supreme Court Rule 58(2), 28 U.S.C.A. Petitioner-Appellant Frederika Blankner respectfully requests that the Court allow rehearing of its order of June 26, 1972 denying the Petition for Writ of Certiorari. Since the denial of that Petition your Petitioner has ascertained that there exist compelling reasons, not heretofore presented, for this Court to accept

jurisdiction. These new grounds are set forth in the following paragraphs.

A.

The Effect of Fuentes v. Shevin, ... U.S. ..... (Nos. 70-5039 and 70-5138), 40 LW 4692.

On June 12, 1972, subsequent to the filing of the Petition for Writ of Certiorari, this Court handed down its important decision in the case of *Fuentes* v. *Shevin, supra.* In that case the Court held against the validity of Florida and Pennsylvania replevin statutes which permitted a seller of property under a conditional sales contract to retake the property from the buyer without a prior judicial hearing. The issue in the case, as framed by the Court, was whether the due process right to notice and hearing was afforded the buyer at a time when the deprivation could still be avoided.

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if it was unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone.' *Stanley* v. *Illinois*, ... U.S. ....., ..."

Viewed in this posture the *Fuentes* decision bears overwhelming similarity to the case at bar. Here it is undisputed that Petitioner was not given notice or a hearing in 1964 when the City of Chicago's Department of Urban Renewal on October 8, 1964, made the fundamental and

irrevocable decision to declare the area "slum and blighted" and thus made the petitioner's property subject to condemnation proceedings and clearance. Nor was notice or an adversary hearing granted Petitioner later the same year when on November 16, 1964 the City Council of Chicago adopted the findings of the Department by Ordinance. Nor was personal notice given or hearing afforded in 1966 when the Council approved by Ordinance the Development Plan for the area in which Petitioner's property was located.

Rather, it was not until 1968, when the City of Chicago filed a Petition to Condemn in the Circuit Court of Cook County, that Petitioner was allegedly afforded the kind of notice and hearing called for by the *Fuentes* holding. Surely the requirement in that case that a hearing be held "at a meaningful time" is not fulfilled by granting a hearing four years after the effective decision to seize the property has been made. The inherent unfairness of such a system is further emphasized by the fact that when Petitioner was finally given a hearing in 1968 the burden was placed upon her to disprove the findings of the City and the Department made in 1964. Hence, Petitioner urges that the facts of this case should be re-evaluated in light of the intervening *Fuentes* decision.

B.

The Denial of Equal Protection by the Illinois Eminent Domain Act. (Ill.Rev.Stat., 1968, Ch. 47, Sec. 1 et seq.)

The Illinois Statutes confer the right of eminent domain on municipalities with the specific requirement that the right is to be exercised "by condemnation proceedings in conformity with the provisions of the con-

stitution and the statutes of the State of Illinois", as follows:

> "Acquirement of property. § 11-61-1. The corporate authorities of each municipality *may exercise the right of eminent domain by condemnation proceedings in conformity with the provisions of the constitution and statutes of the State of Illinois* for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare. . . ."

(Ill.Rev.Stat., 1968, Ch. 24, Cities and Villages Municipal Code 1961, Sec. 11-61-1) (Emphasis supplied)

This passage of the law clearly establishes that either the municipality, in this case the City of Chicago, must take the property "by condemnation proceedings in conformity with the provisions of the constitution and statutes of the State of Illinois" or it does not have the authority to take the property at all.

Accordingly, the City's Petition to Condemn claims that it is brought pursuant to the authority of the Urban Renewal Consolidation Act of 1961 (Ill.Rev.Stat., 1968, Ch. 67½ Sec. 91.101-91.136) and the Blighted Areas Redevelopment Act of 1947 (Ill.Rev.Stat., 1968, Ch. 67½ Sec. 63-91).

Both of those Acts specify that the proceedings to condemn slum and/or blighted property brought thereunder shall be subject "in all respects" to the Eminent Domain Act, as follows:

> "*Condemnation proceedings* instituted hereunder shall be brought by and in the name of the municipality and shall be *in all respects in accordance with an Act* entitled 'An Act to provide for the exercise of the right of *eminent domain,*' approved April 10, 1872, as heretofore or hereafter amended. (Chapter 47, § 1 et seq.)

(Ill.Rev.Stat., 1968, Ch. 67½, Sec. 91.112 and also Sec. 91.122, and Sec. 76) (Emphasis supplied)

Similarly to the Cities and Villages Act quoted above, this passage of the law likewise clearly establishes that, in order to exercise the right of eminent domain, either a municipality, in this case the City of Chicago, must take the property by "condemnation proceedings . . . in all respects in accordance with" the Eminent Domain Act or it does not have the authority to take the property at all.

The Eminent Domain Act contains a provision for so-called "quick take". If the Condemning Authority, usually the State of Illinois, chooses, it may seek an immediate order upholding the taking of the property and granting the immediate right to possession even though the issue of compensation has not yet been decided. (Ill. Rev.Stat., 1968, Ch. 47, Sec. 2.1) This procedure is known as a "motion to take". In such a case the owner of the condemned property is granted two rights:

a) A full hearing must be held by the trial court to determine that the right of eminent domain is "not being improperly exercised in the particular proceeding," as follows:

> "Hearing— . . . .
>
> § 2.2. (a) *The court* shall fix a date, not less than five (5) days after the filing of such motion, for the hearing thereon, and shall require *due notice* to be given to each party to the proceeding whose interests would be affected by the taking requested. . . .
>
> (b) *At the hearing*, if the court has not previously, in the same proceeding, determined that the petitioner has authority to exercise the right of eminent domain, that the property sought to be taken is subject

> to the exercise of such right, and that *such right is not being improperly exercised in the particular proceeding*, then *the court first shall hear and determine such matters*. The court's order thereon shall be a *final order* and *an appeal may be taken therefrom* by either party within thirty (30) days after the entry of such order. . . ."

(Ill.Rev.Stat., 1968, Ch. 47, Sec. 2.2) (Emphasis supplied.)

No requirement is placed on the property owner that he overcome a presumption of the propriety of the taking.

b) The property owner is given the opportunity to take an *interlocutory appeal* solely on the issue of the propriety of the exercise of the right of eminent domain. (Ill.Rev.Stat., 1968, Ch. 47, Sec. 2.2 as quoted above)

In the case at bar, because the City did not exercise its option to file a "motion to take", the Petitioner was *forced* to contest the taking of her property by filing a Traverse. In such a proceeding the Illinois Courts have consistently held that the administrative finding of the Department of Urban Renewal, taken with the City Council Ordinance adopting the same, establish *prima facie* that the right of eminent domain is properly exercised. See *City of Chicago* v. *Barnes*, 30 Ill.2d 255, 257 (1964).

Said procedure, forced upon Petitioner, precluded her from the opportunity of an immediate appeal. The Illinois Supreme Court refused to treat the order of the trial court on the Traverse as a final order and hear an appeal solely on the issue of the taking, and so the Court denied her appeal of the Traverse as premature. Thus, in order to appeal this issue of the right of the City of Chicago to take her property it was necessary for Petitioner *first* to undergo a jury trial on the issue of just compensation,

resulting in a final judgment order taking the property, before the right of the City to take it had been established through appeal.

The consequence for the petitioner was not only to lose ownership of her property to the City before it had been decided that the City had a right to take it, but in addition she suffered the burden of additional attorney's fees and court costs, and the return by the jury of an award substantially less than that offered by the City prior to trial. Hence, Petitioner was severely penalized because she wished to appeal the right to take. She received substantially less than she would have had she chosen not to pursue her rights through an appeal on the taking. Therefore, due to the very procedure forced upon Petitioner by the condemning authority, Petitioner was *de facto* denied her constitutional right of "just compensation" through "fair cash market value", and the advantages of negotiation and settlement.

There is no rational distinction which explains the difference in treatment under Illinois Case Law between "quick take" and "non quick take". Condemnees in Petitioner's situation should be guaranteed the same rights as those in "quick take" situations, and the responsibilities of municipalities *vis a vis* Condemnees should be identical to the responsibilities of the State in "quick take" situations. The practice outlined by the Illinois statutes as presently followed in Illinois practice is therefore in violation of the 14th Amendment Equal Protection clause and should be struck down.

As discussed above, four Illinois statutes make clear the conditions under which a municipality, in this case the City of Chicago, must operate in order to exercise the power of eminent domain. These four statutes are the

Cities and Villages Act, the Consolidated Urban Renewal Act of 1961, the Blighted Areas Redevelopment Act of 1947, and the Eminent Domain Act, in the sections indicated. The conditions set by these four statutes for the exercise of the power of eminent domain are that the property must be taken by "condemnation proceedings in conformity with the provisions of the constitution and the statutes of the State of Illinois," and specifically by "condemnation proceedings . . . in all respects in accordance with" the Eminent Domain Act.

The said four statutes establish that either the municipality, in this case the City of Chicago, must observe condemnation proceedings in conformity with the statutes or it does not have the right to take the property at all. The City of Chicago did not observe these condemnation proceedings in the taking of the subject property so it did not have the authority to take it.

This fact made the taking unconstitutional, which means that the taking was null and void.

C.

The Denial of Equal Protection by the Municipal Code of Chicago (Secs. 15-5 and 15-7)

Petitioner is aware that the next argument has been previously presented in part in an *Amicus* Brief filed in this Court prior to consideration of the Writ of Certiorari. However, since the parties have not directly presented this argument, and because Petitioner feels that this argument is of crucial importance to disposition of the case at bar, we are presenting it more fully in this Petition for Rehearing.

Section 15-7 of the Municipal Code of Chicago mandates that in "*conservation areas*" the Department of Urban

Renewal of the City must afford every property owner whose property is sought to be condemned an opportunity to be heard before such a proceeding will be approved.

> "The Department of Urban Renewal . . . shall have and exercise the following powers with respect to the development, redevelopment and replanning of conservation areas. . . .
>
> (b) approve *each use* of eminent domain for the acquisition of real property for the purposes, provided that every property owner affected by condemnation proceedings shall have the *opportunity to be heard* by the Department *before* such proceedings may be approved;" (Municipal Code, City of Chicago, Sec. 15-7) (Emphasis supplied)

This procedure insures to property owners in "conservation areas" the opportunity to have at least a quasi-judicial determination by the Department of Urban Renewal of the appropriateness of the administrative findings. In areas under consideration for "slum and blighted" designation, however, no such opportunity is granted the affected property owner. The personal notice given prior to the condemnation Court hearing on compensation is not sufficient, because at this stage several years *after* the "slum and blighted" designation has already been made, the opportunity for a Court hearing, as shown in the instant case, is illusory. At that time the acceptance by the Court of the administrative findings as *prima facie* evidence of the slum and blighted conditions in the area, *de facto* precludes any realistic investigation into the issue.

Petitioner contends that there is no logical distinction which can account for this difference in procedure. Fur-

ther, this difference discriminates against property owners in areas under consideration for designation as "slum and blighted" and ultimate condemnation and clearance in violation of the Equal Protection clause of the Fourteenth Amendment and must be struck down.

II. CONCLUSION

Wherefore, it is respectfully requested that this Honorable Court grant this Petition for Rehearing.

Respectfully submitted,

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